

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 24-03667-mg

12 - - - - - x

13 MEGHJI,

14 Plaintiff,

15 v.

16 MASHINSKY, et al.,

17 Defendants.

18 - - - - - x

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Page 2

1 **Adv. Case No. 24-03738-mg**

2 - - - - - x

3 **MEGHJI,**

4 **Plaintiff,**

5 **v.**

6 **ATAR,**

7 **Defendant.**

8 - - - - - x

9 **Adv. Case No. 24-03739-mg**

10 - - - - - x

11 **MEGHJI,**

12 **Plaintiff,**

13 **v.**

14 **O'BRIEN,**

15 **Defendant.**

16 - - - - - x

17 **Adv. Case No. 24-03740-mg**

18 - - - - - x

19 **MEGHJI,**

20 **Plaintiff,**

21 **v.**

22 **YARWOOD,**

23 **Defendant.**

24 - - - - - x

25

Page 3

1 Adv. Case No. 24-04010-mg

2 - - - - - x

3 BARBER LAKE DEVELOPMENT LLC

4 Plaintiff,

5 v.

6 PRIORITY POWER MANAGEMENT, LLC,

7 Defendant.

8 - - - - - x

9

10 United States Bankruptcy Court

11 One Bowling Green

12 New York, NY 10004

13

14 August 27, 2024

15 10:00 a.m.

16

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18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

Page 4

1 HEARING re Update on Avoidance Actions. (Doc ## 7458, 7618).

2

3 HEARING re Status Update on Corporate Creditor Matter (Doc

4 ## 7585, 7587, 7588, 7592).

5

6 HEARING re Status Update. (Doc #7612)

7

8 HEARING re Status Update on Ionic Digital, Inc. (Doc # 7590,

9 7616, 7631).

10

11 HEARING re Hearing Held Using Zoom for Government RE: Motion  
12 for an Order Establishing Streamlined Procedures Governing  
13 Avoidance Actions Pursuant to Sections 502, 547, and 550 of  
14 the Bankruptcy Code. (Doc# Doc# 7534, 7559, 7595, 7602,  
15 7603, 705, 7606, 7607, 7610, 7611, 7619, 7625)

16

17 HEARING re Adversary proceeding: 24-03667-mg MEGHJI v.  
18 MACHINSKY et al Pre-Trial Conference Held Using Zoom for  
19 Government. (Doc #1,2,3,5 to 7)

20

21 HEARING re Adversary proceeding: 24-03738-mg MEGHJI v. ATAR  
22 Pre-Trial Conference Held Using Zoom for Government. (Doc  
23 #1, 2, 4)

24

25 HEARING re Adversary proceeding: 24-03739-mg MEGHJI v.

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1 O'BRIEN Pre-Trial Conference Held Using Zoom for Government,  
2 (Doc #1, 2, 4)  
3

4 HEARING re Adversary proceeding: 24-03740-mg MEGHJI v.  
5 YARWOOD Pre-Trial Conference Held Using Zoom for Government.  
6 (Doc #1, 2, 4, 6, 7)  
7

8 HEARING re Adversary proceeding: 24-03741-mg MEGHJI v. PETER  
9 Pre-Trial Conference Held Using Zoom for Government. (Doc  
10 #1, 2, 4)  
11

12 HEARING re Adversary proceeding: 24-03976-mgz MEGHJI v. NOY  
13 Pre-Trial Conference Held Using Zoom for Government. (Doc  
14 #1, 2, 4)  
15

16 HEARING re Adversary proceeding: 24-04010-mg Barber Lake  
17 Development LLC v. Priority Power Management, LLC  
18 Pre-Trial Conference Held Using Zoom for Government. (Doc  
19 ##1, 2, 5, 6, 12, 18)  
20

21 HEARING re Doc# 7640 Amended Notice of Agenda for Hearing to  
22 be Held August 27, 2024, at 10:00 A.M. (Prevailing Eastern  
23 Time)  
24 Transcribed by: Sonya Ledanski Hyde  
25

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13 ALSO PRESENT:  
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15 DAVID J. ADLER  
16 ELENI ALEMU  
17 BROOKS ANTWEIL  
18 JUAN ARGINIEGAS  
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1 P R O C E E D I N G S

2 CLERK: Good afternoon. All right, starting the  
3 hearing calendar for August 27th, 2024, at 10 a.m. Calling  
4 the following cases: Case Number 22-10964, Celsius Network,  
5 LLC; Case Number 24-3667, Meghji v. Mashinsky et al; Case  
6 Number 24-3738, Meghji v. Atar; Case Number 24-3739, Meghji  
7 v. O'Brien; Case Number 24-3740, Meghji v. Yarwood; Case  
8 Number 24-3741, Meghji v. Peter; Case Number 24-33976,  
9 Meghji v. Noy; Case Number 24-4010, Barber Lake Development  
10 LLC v. Priority Power Management LLC et al. If we can have  
11 parties state their appearances for the record?

12 MR. KOENIG: Good morning, Diana. It's Chris  
13 Koenig from Kirkland and Ellis for the post-effective date  
14 Debtors and the Plan Administrator. Can you hear me okay?

15 CLERK: Yes, I can, Chris.

16 MR. KOENIG: Thank you so much. We have a  
17 conference room that has a camera setup in this room. It's  
18 -- the name on the Zoom account is CH 50C. I think it's  
19 stuck in the -- oh, there we go, there we go, there we go.  
20 Thank you.

21 CLERK: Yeah. All right, thank you. Do we have  
22 any additional Counsel for the Debtors that are stating  
23 their appearance?

24 MR. FERRARO: Hi Diana, not Counsel, but Plan  
25 Administrator for the Debtors, Chris Ferraro. And I

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1 apologize, I can't figure out how to spell out my last name  
2 on Zoom. For some reason, it changed, so it just says Chris  
3 F.

4 CLERK: Is that correct?

5 MR. FERRARO: Oh, now it's correct. Thank you.

6 CLERK: You're welcome. All right, do we have  
7 Creditors Committee Counsel on the line? Would you like to  
8 state your appearances? All right, how about the US  
9 Trustee?

10 MS. CORNELL: Good morning, Diana. I am Shara  
11 Cornell, here on behalf of the Office of the United States  
12 Trustee. I believe I'm going to be joined with my colleague  
13 Mark Bruh.

14 CLERK: Okay, thank you.

15 MS. CORNELL: Thank you.

16 CLERK: All right, I'm going to ask the parties  
17 that are speaking on the record this morning to raise -- use  
18 the raised hand function in Zoom. Please do that. I will  
19 ask you to unmute and ask you to state your appearance for  
20 the record. Yes, Brian?

21 MR. LENNON: Good morning, Brian Lennon of Willkie  
22 Farr & Gallagher on behalf of the Litigation Oversight  
23 Committee.

24 CLERK: Okay, thank you. James?

25 MR. MATTHEWS: Yes, James Matthews,

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1 (indiscernible), pro se Creditor.

2 CLERK: James. Aaron?

3 MR. COLODNY: Good morning, Aaron Colodny from  
4 White & Case on behalf of the litigation administrator.

5 CLERK: All right, thank you. Christopher?

6 MR. VAUGHAN: Good morning, Christopher Vaughan on  
7 behalf of the group of 34 Defendants in the Adversary  
8 Proceedings.

9 CLERK: Okay, is that for the Meghji v. Mashinsky  
10 matter?

11 MR. VAUGHAN: It is not, no.

12 CLERK: Okay, do you know the Case Number or the  
13 matter?

14 MR. VAUGHAN: I mean, there's 34 of them. I can  
15 run through them all if you want me to.

16 CLERK: It's fine. It's not necessary. If you  
17 happen to be appearing on a specific adversary, I was just  
18 going to ask for the adversary number. It's not --

19 MR. VAUGHAN: No, it's just in relation to the  
20 motion or (indiscernible) procedures.

21 CLERK: Okay. Perfect, thank you. Ross?

22 MR. HOOPER: Good morning, Ross Hooper from Seward  
23 & Kissel or for Barbara Lake Development, LLC.

24 CLERK: All right, thank you. Michelle?

25 MS. JASPMAN: Good morning, Michele Jaspan of

Page 23

1 Falcon Rappaport & Berkman, joined with my colleague Richard  
2 Weltman for Creditors Will and Tom McCann.

3 CLERK: All right, thank you. Sam?

4 MR. HERSHY: Yes, good morning. Apologies --

5 CLERK: Sorry, you're echoing a little bit.

6 MR. HERSHY: Sorry, give me one minute and we'll  
7 fix this.

8 CLERK: Okay, thank you. Are there any additional  
9 parties that are speaking on the record? Jared?

10 MR. CLARK: Yes, hello. Jared Clark for Darren  
11 Yarwood. Phillips Nizer LLC.

12 CLERK: All right, thank you.

13 MR. PESCE: Hi Diana, it's Gregory Pesce, White &  
14 Case on behalf of two partis -- Ionic Digital and the  
15 Celsius Litigation Oversight Committee from White & Case.  
16 Thank you.

17 CLERK: Thank you. All right --

18 MR. PAPANDREA: Yeah, good morning, it's Michael  
19 Papandrea from Lowenstein Sandler. We represent a number of  
20 defendants in various adversary proceedings. I think it's  
21 like 132 adversary proceedings. But similar to Mr. Vaughan,  
22 we're -- we don't intend to speak as to any of them  
23 specifically, just more in response to, you know, the  
24 matters on for the hearing generally.

25 CLERK: All right, thank you. All right, so --

1 MR. SARACHEK: Hi, good morning.

2 CLERK: Yeah --

3 MR. SARACHEK: Joe Saracheck for the Ad Hoc  
4 Committee of Corporate Creditors.

5 CLERK: All right, thank you. Cheryl?

6 MS. GIUGLIANO: Good morning. This is Sheryl  
7 Giugliano, Ruskin Moscou Faltischek, Counsel to Alexander  
8 Mashinsky, Koala One LLC, AM Ventures Holdings in connection  
9 with the Meghji v. Mashinsky Adversary Proceeding. I don't  
10 believe that I will need to speak on the record, but to the  
11 extent that I do, I just wanted to make the appearance.  
12 Thank you.

13 MAN: Okay --

14 CLERK: Yeah, Sam?

15 MR. HERSHY: Yeah, good morning. Sam Hershey  
16 from White & Case for Mo Meghji, the Litigation  
17 Administrator. I apologize for the issue before, but we  
18 have apparently resolved it.

19 CLERK: Yes, you have. Thank you. Do you have  
20 any additional appearances? If you're stating your  
21 appearance on the record, please use the raise hand function  
22 in Zoom. I will ask you to unmute and take your appearance.  
23 Yes, Thad? Yeah, I can't hear you.

24 MR. WILSON: There we go. Thad Wilson from King  
25 and Spalding on behalf of Jeremy (indiscernible) in the

Page 25

1 Meghji v. Mashinsky Adversary Proceeding. I don't think I'm  
2 going to need to speak today, but to the extent I need to,  
3 just wanted to make an appearance.

4 CLERK: All right, thank you. Roland?

5 MR. JONES: Good morning, I just wanted to note my  
6 appearance. I don't think I'll be speaking, either. I  
7 represent multiple Defendants.

8 CLERK: All right, thank you. All right, Mr.  
9 Jones. All right,

10 MS. NATHANSON: Good morning, this is Leigh  
11 Nathanson from King & Spalding. I represent two Defendants  
12 in the Meghji v. Mashinsky Adversary Proceeding -- Christine  
13 Meehan and Koala 2 LLC. Like some of my Co-Defendants'  
14 Counsel, I don't intend to speak on the record, but if  
15 necessary, I wanted to make my appearance. Thank you.

16 CLERK: You're welcome. Thank you. All right,  
17 for the parties that have joined, if anyone is speaking on  
18 the record, please use the raised hand function in Zoom. I  
19 will ask you to unmute and take your appearance. All right,  
20 Judge, would you like to test your microphone?

21 I think we lost him. Can -- for the parties that  
22 have joined, is anyone speaking on the record? If you are,  
23 please use the raised hand function in Zoom. I will ask you  
24 to unmute and take your appearance. Yes, John?

25 MR. ANKENNEY: Hi, I'm speaking on the record.

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1 CLERK: Okay, if we could just have your first and  
2 last name.

3 MR. ANKENEY: Sure. The first name is John. Last  
4 name is Ankeney. A-N-K-E-N-E-Y.

5 CLERK: Okay, thank you. You can mute the line  
6 for now. All right, for the parties that have joined, is --  
7 if anyone is speaking on the record, please use the raised  
8 hand function in Zoom. I will ask you to unmute and take  
9 your appearance. Deb?

10 MS. KOVSKY-APAP: Good morning, Diana. Deb  
11 Kovsky, Troutman and Pepper for a member of Preference  
12 Defendants.

13 CLERK: Okay, thank you.

14 THE COURT: Can you hear me, Diana?

15 CLERK: Yes, I can, Judge. Thank you.

16 THE COURT: Okay, thank you.

17 CLERK: All right, for the parties that have  
18 joined, if anyone is speaking on the record this morning,  
19 please use the raised hand function in Zoom. I will ask you  
20 to unmute and take your appearance.

21 And for the parties that have joined, if anyone is  
22 speaking on the record, please unmute your line and state  
23 your appearance for the record. The 958 Celsius hearing, is  
24 that for one of the Debtor's lines?

25 THE COURT: Yeah, I think that was our line that

1 wasn't working. We'll try to close that out. I'm just  
2 joining on my computer now.

3 CLERK: Okay, all right. Thank you. Judge, it's  
4 10 o'clock by my watch. Would you like me to make a final  
5 call for appearances?

6 THE COURT: Yes, if you would, please, Diana.

7 CLERK: Okay, this is the final call for  
8 appearances. If anyone is speaking on the record and has  
9 not stated their appearance yet, please use the raised hand  
10 function in Zoom. I will ask you to unmute and take your  
11 appearance. All right, I do not see any hands.

12 MR. GOLDSTEIN: Harley Goldstein for Jake Steele.

13 CLERK: Okay, thank you. Yes --

14 MAN: Yeah, I believe that Louie Layrisson from  
15 Baker Botts will be joining and speaking on behalf of  
16 Priority Power Management LLC. We're having some issues  
17 with the Zoom. But he is going to be joining, and I believe  
18 he'll be making an appearance on the record as soon as he's  
19 able to join.

20 CLERK: Okay. Thank --

21 MR. LAYRISSON: Good morning, Louie Layrisson here  
22 on behalf of Priority Power. And thank you (indiscernible)

23 --

24 CLERK: All right. Again, any call for  
25 appearances? Thank you. If you're making an appearance,

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1 please use the raised hand function in Zoom. All right, I  
2 don't see any hands. Judge, would you like to start?

3 THE COURT: I would. Thank you very much and good  
4 morning, everybody. This is Judge Glenn. We have a long  
5 agenda for today. I see on my screen that there are 152  
6 Zoom connections. I will call the matters in the order in  
7 which they appear on the agenda that was circulated. It's  
8 ECF-7640.

9 It's important that anyone -- well, when we cover  
10 specific items on the agenda, I will only hear people who  
11 wish to address that agenda item. It's very important that  
12 anybody else who wishes to be heard at the appropriate time  
13 uses the raise hand function at the bottom of the Zoom  
14 screen, and I will try and recognize people in the order in  
15 which their hands are raised as best I can.

16 Depending on what the item that we're discussing,  
17 I may limit the amount of time that I will allow any one  
18 speaker to address the Court. I do try always to hear what  
19 people's concerns are, what their arguments are, whether  
20 they're pro se parties without an attorney, or whether  
21 they're attorneys appearing.

22 So let's begin. And the first item on the agenda  
23 is the Status Update on Distributions. Who's going to speak  
24 for the Plan Administrator? I guess the presentation  
25 materials that were circulated, which are ECF-7638 were

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1 actually circulated by Kirkland. So who on behalf of  
2 Kirkland wants to address the issues that are in that  
3 hearing presentation, which is ECF-7638?

4 MR. KOENIG: Good morning, Your Honor. It's Chris  
5 Koenig. Can you hear me now?

6 THE COURT: I can, Mr. Koenig.

7 MR. KOENIG: It's a little --

8 THE COURT: You're echoing. Let me first ask, can  
9 everybody hear me okay? Yes, okay. I see heads shaking  
10 yes. Mr. Koenig, do you have more than one microphone in  
11 the -- in your vicinity so that it's picking up your voice  
12 in multiple locations? Because that can cause the echo.

13 MR. KOENIG: Understood, Your Honor. I've dialed  
14 in on another line, and somebody can let me in under my  
15 name, Chris Koenig.

16 THE COURT: You're still echoing. There has to be  
17 more than one microphone open. Try again.

18 MR. KOENIG: There we go. Can you hear me now,  
19 Your Honor?

20 THE COURT: Yeah, but I hear echoes.

21 MR. KOENIG: I think I figured it out. Give me  
22 one -- okay, Your Honor. I think that the echo is gone now?

23 THE COURT: It's about 90 percent gone. Let's put  
24 it that way. But go ahead. I want to see how you're doing.

25 MR. KOENIG: All right, thanks, Your Honor. I

1 went out into the hallway with a cell phone, so hopefully  
2 this works. I think the problem is that the speaker was  
3 generating it back and doing a feedback loop. Can you hear  
4 me okay?

5 THE COURT: I can. Go ahead.

6 MR. KOENIG: Thank you, Your Honor. I'm sorry for  
7 the technical difficulties. So as you mentioned, we have an  
8 update on distribution. So the Plan Administrator, I'm  
9 joined on a Zoom by Mr. Ferraro, the Plan Administrator. He  
10 filed a robust report on the docket about distributions at  
11 7637.

12 So rather than have me give the update, we thought  
13 we'd have Mr. Ferraro give the update, and perhaps even  
14 better, since he hopefully won't be having the same tech  
15 issues that I have. So I'll turn it over to Mr. Ferraro and  
16 we'll sort of do a couple of questions and answers that we  
17 did during the case. So Mr. Ferraro, if you could unmute  
18 and we can make sure that everybody can hear you?

19 MR. FERRARO: Yeah, I think I should be unmuted.

20 THE COURT: Yeah, you're fine. Good morning, Mr.  
21 Ferraro.

22 MR. FERRARO: Good morning, Your Honor.

1      seven months since the effective date occurred?

2 MR. FERRARO: Yeah, we distributed cryptocurrency,  
3 Fiat and Mining Co. common stock to over 250,000 Creditors.  
4 This is roughly two thirds of all eligible Creditors by  
5 number, for 2.5 billion in value, which is 93 percent of the  
6 total eligible amount.

7                   In the first two weeks after the effective date,  
8                   we distributed 65 percent of the eligible value for 1.7  
9                   billion. And within six weeks, we distributed 80 percent of  
10                  the value for two billion.

11 THE COURT: Let me just stop you for just a  
12 moment, Mr. Ferraro. I'm following what you're reporting  
13 on, and I do want to hear it. But for those of you who are  
14 looking for the actual report, it's ECF-7638. And I guess  
15 it's a 7637, 7638. And I'm following it on Page 1. So if  
16 anyone wants to actually see the document, I think that is  
17 sort of the basis for Mr. Ferraro's presentation. And  
18 that's where you can find it on the docket. Go ahead, Mr.  
19 Ferraro, I'm sorry to interrupt you.

20 MR. FERRARO: Thank you. No, no, thank you, Your  
21 Honor. That's very helpful. Subsequent to those first six  
22 weeks, we have distributed 30 to 40 percent of the remaining  
23 eligible value in every month. Other than we paused, of  
24 course, for the Stretto data security incident in late May  
25 through June.

1                   In total, we've attempted more than 2.7 million  
2 distributions for 372,000 eligible Creditors in 165  
3 countries. We are now in the part of the process, we're  
4 dealing with Creditors that have bespoke individual type  
5 issues. And given time to resolve such distributions, it  
6 might extend given this added complexity.

7                   MR. KOENIG: So Mr. Ferraro, how many Creditors  
8 haven't successfully been in distribution and what are the  
9 most common issues that you're seeing that they have?

10                  MR. FERRARO: Yeah, there are 120,000 Creditors  
11 who have not been able to claim. And we put those into the  
12 following groups. First, there's 50,000 Creditors of  
13 PayPal, who have received a claim code, but have yet to  
14 redeem. Usually, the Creditor simply needs to open a PayPal  
15 account with a matching date of birth and follow the  
16 instructions to claim their distribution.

17                  Next, 44,000 Creditors at Coinbase, who need to  
18 open an account or add an email and date of birth that  
19 matches the Celsius information. These Creditors have been  
20 getting an email typically every two weeks with every failed  
21 attempt telling them how to proceed.

22                  There are 11,000 Creditors who have a Coinbase  
23 account, but typically, there has some sort of open KYC  
24 issue. These Creditors also get an email after every  
25 attempt --

1 THE COURT: KYC is know your customer?

2 MR. FERRARO: Know your customer. Sorry, Your  
3 Honor. Yes. Usually, they have some onboarding item  
4 opened, but we're able to match an email back to the Celsius  
5 information, so we know that they are in the process of  
6 opening an account. And we attempt every two weeks, and  
7 they send -- we send an email if the attempt is successful  
8 or unsuccessful.

9 In September, we will also offer Creditors who  
10 have not been able to successfully claim their crypto  
11 distribution. The option to transition to Fiat. This will  
12 be done through an election process and will give Creditors  
13 an offramp to get their distribution in Fiat. As some of  
14 these Creditors are likely stuck in onboarding at PayPal or  
15 Coinbase.

16 Additionally, we have about 5,000 uncashed checks  
17 that we sent to Creditors over the last few months. After.  
18 90 days, these checks will be voided, and these Creditors  
19 will be transitioned to Hyperwallet. And finally, there are  
20 2,000 Creditors ready to claim their distribution with  
21 Hyperwallet, who are still in the wire process.

22 Of the 120,000 Creditors, only eight percent have  
23 an open ticket with our customer support team. For all of  
24 the issues, customers should contact us if they are having  
25 problems claiming, and we will work with them. The

1 quarterly report has details about the ticketing process and  
2 how Creditors can get in contact with their support team.

3 MR. KOENIG: So Mr. Ferraro, what do you do if a  
4 distribution attempt is unsuccessful to any particular  
5 Creditor?

6 MR. FERRARO: Yeah, we continue attempting the  
7 distribution and providing support. Creditors assigned to  
8 Coinbase and eligible at the effective date would've had  
9 their distribution attempted 10 times already. PayPal claim  
10 codes are always active, and we send regular emails  
11 reminding Creditors to take the necessary steps and redeem.

12 For wire transfers, there has been approximately  
13 26 cohorts since the effective date. And Creditors who  
14 resubmit their wire information are typically attempted in  
15 the next cohort, typically done weekly. There is an email  
16 sent to Creditors after every distribution attempt, whether  
17 successful or unsuccessful. And starting in September, we  
18 will send weekly email reminders to all eligible Creditors  
19 that have not received their distribution.

20 MR. KOENIG: So Mr. Ferraro, you mentioned that  
21 there are a number of Creditors that haven't claimed their  
22 distribution. Why might a Creditor not take the steps that  
23 are necessary to claim their distribution?

24 MR. FERRARO: Many of the remaining Creditors have  
25 a small distribution value. Similar to the custody

1 distribution, a sizable amount of these Creditors might not  
2 be incentivized to take the necessary steps to claim their  
3 distribution. Of the 128,000 Creditors that have not  
4 claimed, 64,000, a little bit over a half, have a  
5 distribution value of less than \$100, and 41,000 have a  
6 distribution value between \$100 and \$1,000.

7 The average value for Creditors who have not  
8 claimed their distribution is about \$1,500 at January 16th  
9 prices. With the custody distribution, which was processed  
10 on the Celsius platform for 94 days until February 28th,  
11 2024, only 68 percent by number of Creditors and 97 percent  
12 by value have reclaimed their custody distribution.

13 We are approaching those levels. The custody  
14 distributions were easily claimed by going into the Celsius  
15 app and withdrawing the crypto currency. With distributions  
16 under the plan, Creditors must take additional steps,  
17 signing up with a new service -- PayPal or Coinbase --  
18 passing KYC, know your customer, and for certain Fiat  
19 distributions, providing wire information.

20 It's important to note any amounts that are  
21 unclaimed will ultimately be redistributed to other  
22 Creditors as contemplated under the plan.

23 THE COURT: What is that --

24 MR. KOENIG: So that --

25 MR. FERRARO: Pardon me.

1 THE COURT: When does that come, Mr. Ferraro?

2 MR. FERRARO: Well, there's a year kind of a  
3 (indiscernible) period after the effective date. Mr. Koenig  
4 could probably go into additional details, if needed.

5 MR. KOENIG: Thank you. That's right. It's -- so  
6 the plan provides Your Honor, that a year after a Creditor  
7 has their distribution made available to them, it holds for  
8 the -- it's cheated back to the date to be redistributed to  
9 other folks. We're going to file a motion just to make it  
10 ultra clear what exactly that date is, and we're going to  
11 send very specific notices to Creditors with, you know,  
12 bold, like, you know, you need to claim your distribution by  
13 such and such a date or it will be forfeited. But we'll  
14 bring that matter before Your Honor before we take any  
15 action there.

16 THE COURT: Thank you, Mr. Koenig.

17 MR. KOENIG: Thank you. So Mr. Ferraro, we've  
18 talked at previous hearings about some of the troubles that  
19 we've had with the Fiat distribution process. What have you  
20 done to improve the Fiat distribution process?

21 MR. FERRARO: Yeah, let me start with just  
22 reminding everybody kind of where we were at at the  
23 effective date. We originally planned to send wires to  
24 Creditors with the Fiat distribution over \$250,000. This  
25 was about 50 Creditors in total.

1                   The remainder that were scheduled for Fiat would  
2 receive checks. Many international Creditors told us they  
3 cannot cash a USD check, and we listened to that feedback.  
4 We now send wires for any amount above \$500, which is about  
5 3,500 Creditors.

6                   To improve the process, we have modified the wire  
7 form to include additional instructions. We also correct  
8 obvious errors in the Creditor's submission. These  
9 modifications to the wire process doubled the success rate  
10 from 30 to 60 percent.

11                  MR. KOENIG: And Mr. Ferraro, am I right in saying  
12 that some of the folks that are currently stuck in the wire  
13 process have transitioned to Hyperwallet?

14                  MR. FERRARO: That's correct, Mr. Koenig.

15                  MR. KOENIG: Great. And then, just wrapping up,  
16 can you talk -- you mentioned about transitioning Creditors  
17 to different distribution partners, if they're sort of stuck  
18 in one thought or another. Can you just elaborate on that a  
19 little bit more?

20                  MR. FERRARO: Yeah, we want to provide an off-ramp  
21 for those Creditors that are stuck. So we developed a  
22 process for transitioning Creditors to a new distribution  
23 agent. This has been proven highly successful thus far. 94  
24 percent of Creditors by value, who have transitioned from  
25 PayPal to Coinbase have claimed their distribution.

1                   With the addition of Hyperwallet, we can now  
2 transition Creditors from crypto to Fiat at scale, which is  
3 important given those issues we've had with both wires and  
4 checks. If a Creditor elects the option to have their  
5 liquid cryptocurrency sold and transitioned to Fiat, the  
6 sale will be done as close as possible to the date of  
7 distribution.

8                   MR. KOENIG: I have nothing further for Mr.  
9 Ferraro.

10                  THE COURT: All right. I see Mr. Bronge's hand  
11 raised. I will call on you, Mr. Bronge.

12                  MR. BRONGE: Yes, hello. This is Johan Bronge.  
13 Can you hear me?

14                  THE COURT: Yes, I can. Go ahead.

15                  MR. BRONGE: Yes, thank you. I just would like to  
16 comment on the distribution from the Creditor's side. Now I  
17 am an international Creditor, and I have tried to pass  
18 Coinbase KYC since January. I have sent numerous emails to  
19 Celsius and to Coinbase. The response is not appropriate.

20                  It takes weeks or months to respond from both of  
21 these entities, and I have provided all information, asked  
22 for several times. My account has been approved and then  
23 back in manual review process. And this is just ongoing.  
24 And the way Mr. Ferraro describes this is not how it looks  
25 from the Creditor's side.

1                   The incompetence is rampant, and the ignorance of  
2 issues is the same. So I would be -- I really would hope  
3 the Court would do something to make this work for  
4 international Creditors. And I'm not alone in this.

5                   THE COURT: Okay, Mr. Koenig --

6                   MR. BRONGE: I think you --

7                   THE COURT: -- Mr. Koenig, reach out to Mr. Bronge  
8 specifically and let's see whether you can solve his issues.

9                   MR. KOENIG: Understood. And anybody that's stuck  
10 in KYC or having a problem, you should reach out to me. My  
11 email is on all of the pleadings. If you reach out to me  
12 with your Coinbase ticket, we can help escalate that with  
13 the appropriate folks. Please reach out.

14                   MR. BRONGE: Yeah, thank -- just so you know, I've  
15 already done that several times.

16                   MR. KOENIG: I don't recall --

17                   MR. BRONGE: (indiscernible) --

18                   THE COURT: Mr. Bronge, stop, Mr. Bronge. Mr.  
19 Koenig's going to reach out to you, and let's see whether  
20 you can get this issue resolved. All right.

21                   MR. BRONGE: Thank you.

22                   THE COURT: Next I see Sean Xue. X-U-E, with a  
23 hand raised. Go ahead, please.

24                   MR. XUE: Hi, Judge Glenn. I'm Sean Xue, pro se  
25 Creditor. So I just wanted to raise the -- an issue with

1 the Court. Basically, I'm part of a very small group of  
2 Creditors that have transfer claims. And specifically,  
3 individual to individual transfer claims.

4 So me and the -- I transferred it actually to my  
5 wife. And we've been like, having a lot of issues just  
6 trying to get attention in terms of the distribution. So  
7 according to the plan, like we're in like, a location that  
8 should be eligible for crypto distribution.

9 So both the transfer and transferee should be  
10 eligible. And according to the plan, we should be receiving  
11 that crypto distribution. However, so far, we have not seen  
12 anything. I've been in contact with Kirkland, and they've  
13 been like, generally responsive. But we have not gotten  
14 anywhere.

15 I think like everyone's in agreement in terms of  
16 what we should be getting, but just not in terms of when.  
17 So I just wanted to kind of raise this issue with the Court,  
18 just so that it's kind of out in the open and everyone's  
19 aware of this.

20 THE COURT: All right --

21 MR. XUE: Because I don't see this group in part  
22 of the discussion so far.

23 THE COURT: What jurisdiction are you located in?

24 MR. XUE: So I'm located in Hong Kong, but I  
25 KYC'd. I'm both in Hong Kong and in the United States. I

1 KYC'd in both areas.

2 THE COURT: All right. Mr. Koenig, would you  
3 reach out to Mr. Xue and let's see whether we can get his  
4 problems solved?

5 MR. KOENIG: Yeah, of course.

6 THE COURT: All right. Mr. Xue --

7 MR. XUE: Thank you.

8 THE COURT: -- hopefully this will help. All  
9 right, is there anybody else who wishes to be heard in  
10 response to Mr. Ferraro's presentation? All right, let's go  
11 onto the next agenda item, which is the update on the  
12 corporate Creditor matter. Who's going to address this on  
13 behalf of the Plan Administrator or the Debtor?

14 MR. KOENIG: Your Honor, it's still me, Chris  
15 Koenig. So just really briefly, I wanted to give an update  
16 here. After last month's hearing, the parties agreed to go  
17 with mediation. We had a two-day in-person mediation led by  
18 Judge Bentley, who of course is the United States Bankruptcy  
19 Judge in the Southern District of New York.

20 That mediation session was successful. There was  
21 a term sheet that was signed by the (indiscernible) the  
22 Debtors, the Ad Hoc Committee of Corporate Creditors, by Mr.  
23 Sarachek, who's on the line, and Coinbase to resolve the  
24 matters that are set forth in the Corporate Creditor motion.

25 So what we're doing right now is, we're working

1 hard to finalize a motion and associated documentation that  
2 would implement the agreement that would reach to mediation.  
3 We're expecting to file that motion later this week to be  
4 heard at the next hearing on September 12th.

5 Importantly, this resolution is not limited to  
6 just those Corporate Creditors, who were at the mediation or  
7 filed joinders. But it would affect all similarly situated  
8 Corporate Creditors who live in jurisdictions serviced by  
9 Coinbase.

10 That agreement will be set forth in more detail in  
11 the motion. But just at a very high level, the high points  
12 are that every eligible Corporate Creditor would receive the  
13 option to receive cryptocurrency in the amount that they  
14 would have received beginning on the effective date, if they  
15 were scheduled for cryptocurrency distribution by the  
16 Debtor.

17 That means that they would receive January 16th  
18 pricing for cryptocurrency, so they'll receive the upside of  
19 the cryptocurrency market since then. Or alternatively, the  
20 Creditor can elect to receive an equivalent amount of cash  
21 at today's market pricing.

22 We will sell that cryptocurrency in the market as  
23 close in time of the distribution date as possible and give  
24 people the proceeds, again, so that people get the economic  
25 equivalent as close in time as possible, if they elect to

1 receive cash.

2 Now, we expect that cash option is going to be  
3 much faster than the crypto option. As we've talked about  
4 in prior hearings, the KYC know your customer process for  
5 Corporate Creditors is very manual and time intensive.  
6 We've made specific commitments to the term sheet to improve  
7 the cash process, which we think will make that a much  
8 faster option for those Creditors.

9 But if anybody really wants the cryptocurrency for  
10 any reason, they're free to do so, but it will likely take  
11 much longer for them. We will lay all of this out in the  
12 motion and the notice that is sent to eligible Creditors,  
13 assuming it is approved at the hearing in September.

14 There's plenty of other details in the terms  
15 sheet. They'll be laid out in the motion that we'll file  
16 later this week. I just wanted to give the high points to  
17 Your Honor, and of course, will be prepared to address any  
18 questions in September.

19 THE COURT: All right, thank you, Mr. Koenig. My  
20 communications with Judge Bentley have been limiting --  
21 limited exclusively to me sending an email to him thanking  
22 him for undertaking the mediation. I've had no  
23 communications whatsoever about the substance of the dispute  
24 or the resolution.

25 I'm certainly pleased that it appears that a

1 resolution has been reached. Ms. Cornell, I -- you had  
2 objected to the mediation. I overruled the objection  
3 without prejudice. I don't know whether you've been able to  
4 be part of the -- participate in the process or be educated  
5 in the process.

6 Obviously, the US Trustee will take whatever  
7 position it's going to take. I'm not seeking to affect that  
8 one way or the other. My only inquiry is, as to whether  
9 you've been kept apprised of the result of the mediation and  
10 you know, I mean, you still have the right to object. I'm  
11 not trying to affect that at all.

12 If it's possible to satisfy the US Trustee on  
13 substance or procedure, that would certainly be beneficial,  
14 but I -- anything you'd like to say at this point?

15 MS. CORNELL: Absolutely, Your Honor. Thank you,  
16 again. Shara Cornell with the Office of the United States  
17 Trustee. And I have reviewed the preliminary settlement  
18 terms, and that is actually -- that's all I've seen. As  
19 Your Honor knows, the United States Trustee believed and  
20 still believes that mediation was premature.

21 The questions that Your Honor asked at the last  
22 few hearings, and the questions that the United States  
23 Trustee has posed to the Debtors, both during the hearing  
24 and outside the hearing have not been answered. We haven't  
25 seen a status report outlining those questions that you

1 specifically asked to be answered.

2 And many of those answers, we believe, would  
3 inform any mediation settlement. Moreover, what we've seen  
4 again, it's a preliminary mediation settlement. I haven't  
5 read the motion. And I haven't seen the actual settlement  
6 itself, so obviously, I'm speaking from only my information.

7 But what I've seen so far appears to be a material  
8 and substantive plan modification. And as Your Honor is  
9 aware, the United States Trustee does take those issues very  
10 seriously, for both noticing and voting purposes. And I  
11 know you haven't seen the information yet, but as it stands,  
12 what we've seen, we do have some serious problems with.

13 And I can leave it at that, and if Your Honor has  
14 any questions for me, I'd be happy to answer them. But  
15 that's where we stand right now.

16 THE COURT: I think the only thing is that I would  
17 encourage Mr. Koenig and the other parties to the mediation  
18 to communicate fully with the US Trustee to see whether its  
19 concerns can be resolved. Obviously, at the hearing, when  
20 this issue sort of crystallized, it's correct that I ask a  
21 series of questions.

22 It seems to me the answers to those questions may  
23 be totally separate and apart from whether or not the  
24 mediated result is appropriate and should be approved by the  
25 Court. I don't have that before me. I don't know what the

1       terms are. And I'm not commenting one way or the other on  
2       it.

3               I think that there are -- when this came before  
4       the Court before, I was certainly concerned about how we got  
5       to the point we were at at this -- at that. I think that to  
6       the extent that sophisticated parties, many represented by  
7       Counsel have been able to reach an agreement through the  
8       mediation, it may well Counsel approving the settlement  
9       result, even if the US Trustee has legitimate questions that  
10      it wishes to pursue. We'll leave it at that for now. It's  
11      all premature. Is there anybody else who --

12               MS. CORNELL: (indiscernible) -- thank you --

13               THE COURT: -- wants to be heard with respect to  
14      the Corporate Creditor issue.

15               MR. KOENIG: Just really quickly, Your Honor. Mr.  
16      Cornell reminded me. I was remiss in not mentioning that we  
17      -- simultaneously with the motion, we intend to file a  
18      separate statement answering Your Honor's questions. Your  
19      Honor had some pointed questions.

20               We of course intend to answer them fully and as  
21      Your Honor suggested, we of course, do things separate from  
22      the actual motion, but they will be submitted simultaneously  
23      so that you, the other parties and the United States Trustee  
24      will see the answers to those questions, and we're happy to  
25      discuss them at the appropriate time.

1 THE COURT: Thank you very much, Mr. Koenig.

2 MR. KOENIG: Thank you.

3 THE COURT: All right. Let's move on on the  
4 agenda. Item 3 is the update on the Ionic Digital Inc.  
5 Who's going to take that?

6 MR. PESCE: Good morning, Your Honor. It's  
7 Gregory Pesce, White & Case. I'm here on behalf of Ionic  
8 Digital, which is the mining co. under the plan of  
9 reorganization. Can the Court hear me all right?

10 THE COURT: Yes, I can. Go ahead, Mr. Pesce.

11 MR. PESCE: This is -- just in the way of a status  
12 update today, and as the Court probably saw numerous letters  
13 from Ionic Digital shareholders have been filed on the  
14 Court's docket. Ionic Digital filed a press release as well  
15 recently to give an update on its listing process.

16 And in the several months since the effective  
17 date, Ionic Digital, the mining new co. is not in --  
18 squarely in front of the Court while all these other  
19 litigations and distribution matters have been there. But I  
20 wanted to flag this for the Court, for the shareholders.

21 And I can also give just a very brief couple of  
22 minute update on where Ionic is in its listing process, and  
23 then give you and the shareholders, the former Celsius  
24 Creditors, some updates on what will be coming next from  
25 Ionic, if that would be useful for the Court?

1 THE COURT: Please, go ahead.

2 MR. PESCE: All right. So just by way of a recap,  
3 the Celsius plan of reorganization provided for the  
4 establishment of Ionic Digital as a standalone Bitcoin  
5 mining business, with the expectation that Ionic was going  
6 to be publicly listed NASDAQ in the middle of this year.

7 But Ionic Digital came into effect on January  
8 31st, when the plan was consummated. And Celsius' assets  
9 were transferred to Ionic. As I'll explain here briefly,  
10 regrettably, Ionic has not yet become a publicly listed  
11 company on NASDAQ as it expected. There's been a series of  
12 setbacks I can brief the Court and the parties on.

13 But we are continuing at Ionic to pursue the  
14 public listing and will have more updates for our  
15 shareholders on that in near future. When Ionic came into  
16 existence as a standalone company, making it a publicly  
17 listed company on NASDAQ was quite complex.

18 It needed to identify and engage an independent  
19 management team. When the company was effectively pulled  
20 out of Celsius while at the same time pursuing what was  
21 effectively an IPO. We needed to carve the actual assets  
22 for Ionic Digital out of Celsius mining, which had run it  
23 effectively as a corporate division.

24 There needed to be corporate controls and systems  
25 established, given the history that had led to this time.

1 Ionic Digital needed its auditor, RSM, which had been  
2 engaged by Celsius during the bankruptcy to complete an  
3 audit of Ionic Digital's Bitcoin assets.

4 We needed to then also manage the active Bitcoin  
5 site, which is in Midland, Texas. While at the same time,  
6 completing construction of the Cedarvale site, which you  
7 probably heard some about during the course of the  
8 bankruptcy, and which was under construction by Hut 8, the  
9 future plan sponsor during the bankruptcy case itself.

10 So in the context of the Chapter 11 plan, to  
11 address these matters, Hut 8, which is a digital asset  
12 company and the plan sponsor under the Chapter 11 plan,  
13 entered into a management services agreement through the  
14 plan of reorganization.

15 And that management services agreement or MSA  
16 became effective when the plan was consummated. Hut 8, as  
17 the service provider, provided services necessary to manage  
18 the Bitcoin mining site that was in operation. It was going  
19 to act as the general contractor for the under-construction  
20 site at Cedarvale.

21 And finally, Hut 8 was providing corporate  
22 services, including some personnel relevant to the listing  
23 process. It was paid a fee for those services as we worked  
24 through during the -- or had approved, rather, during the  
25 Chapter 11 process.

1                   The real focal point of Ionic's efforts, though,  
2 and its independent board since the effective date has been  
3 to get Ionic publicly listed on NASDAQ as contemplated by  
4 the plan, so that the shareholders whose securities today  
5 are locked up and restricted could have a liquidity for  
6 those securities.

7                   The efforts to become publicly listed on NASDAQ  
8 have been beset by numerous challenges. As it has been sort  
9 of summarized in some of these recent disclosures, the  
10 original CFO did not ultimately take his position. An  
11 independent firm, FTI, was brought in to provide interim  
12 transition -- or management services in the CFO office.

13                  As disclosed in our recent press release, RSM,  
14 which was Celsius' mining auditor, and then Ionic Digital's  
15 auditor notified the company a couple of months ago that it  
16 would resign as auditor. But for not -- not due, to be  
17 clear, due to any disagreement with the company.

18                  That in turn, you know, created a -- numerous  
19 issues for Ionic. The audit, which RSM had begun, was not  
20 yet complete for the final month of the bankruptcy. There  
21 was post emergence audit work that had to be done. And any  
22 securities filings of which we've several of the SEC on this  
23 process could not be updated with our auditor not in place.

24                  So in turn though, hiring an auditor is not like  
25 hiring any other professional. It's a very long, rigorous

1 process. There is independent standards, accountability  
2 standards, etc., that have to be met. So it's not like you  
3 can just hire an auditor in a couple of weeks. It's a  
4 process that takes many, many months.

5 At the same time, management has been running the  
6 business as well. You know, specifically running the  
7 Midland site and working to get the Cedarvale site completed  
8 for its construction project. So while these setbacks have  
9 been regrettable, you know, Ionic has been working around  
10 the clock, and its Board has been working around the clock  
11 to address them.

12 And in creating Ionic Digital, the UCC and the  
13 Debtors created some safeguards in anticipation that the  
14 Ionic Digital Group faced challenges after the effective  
15 date and during its listing process. Among other things,  
16 during the confirmation hearing and then in the recent  
17 letters, you've heard reference to a so-called liquidity  
18 deadline, effectively under the plan of reorganization, the  
19 UCC negotiated for Ionic Digital to have a light to  
20 (indiscernible) agreement by June 1st.

21 If -- they missed it in accordance with the MSA,  
22 as we disclosed in our recent press releases, the Board of  
23 Directors of Ionic, prior to June 1 actually did provide  
24 notice to terminate the managed services agreement. But 8,  
25 the service provider, disputed that notice to provide the

1 parties with the opportunity to negotiate a resolution and  
2 consider an amendment to the MSA.

3 Ionic Digital agreed to delay the effectiveness of  
4 the termination notice, which otherwise was going to take  
5 effect June 1st. Engaged -- Hut 8 and the company engaged  
6 in discussions regarding the MSA. And the MSA that was  
7 entered into on the effective date that was contemplated by  
8 the plan was amended by its terms as was permitted, as of  
9 June 19th, so 18 days after the liquidity deadline.

10 That amendment in turn, and we've put more details  
11 about this in the press release, but just for those who are  
12 listening, the management fee was reduced by roughly 25  
13 percent. The liquidity deadline's a termination penalty, so  
14 a variety of future penalties that might have to be paid, if  
15 a listing ultimately happened were removed. Those are right  
16 to terminate for convenience for an agreed upon termination  
17 payment, and there's clarity on other terms in the original  
18 contract.

19 Following the entry of that amendment that's been  
20 focused on pursuing its registration with the SEC and the  
21 NASDAQ listing, our top priority today remains identifying  
22 and engaging -- or engaging a new audit firm. The company's  
23 management team received proposals from several audit  
24 candidates.

25 We are now zeroing in and working to finalize our

1 engagement of a replacement auditor, which we expect to  
2 happen in the next couple of weeks, subject to that firm  
3 finishing any kind of KYC were on boarding independence  
4 requirements.

5 Once that auditor is engaged, the company plans on  
6 restarting the public filings with the SEC that it had begun  
7 to make prior to the resignation. And that is, as I  
8 mentioned earlier, because the federal law requires the  
9 auditor to sign off effectively on disclosures.

10 With this in mind, Ionic Digital clearly was  
11 expecting to be a publicly listed company making regular  
12 reports to the SEC being publicly listed and traded on  
13 NASDAQ. That has not happened. It's something that is  
14 being addressed 24 hours a day at Ionic.

15 And for that reason, you know, we are not in the  
16 type of communication, regular cadence of communication that  
17 a public company would be. While we work through this  
18 process, though, management is redoubling and refocusing its  
19 efforts to make sure that Celsius' Creditors, who are now  
20 our shareholders, are informed about the process.

21 Earlier today, we released a new press release,  
22 which will be filed on the docket after the hearing. We'll  
23 file future press releases. We're also preparing to have a  
24 webcast from our interim CEO, John Penver, who's our CFO as  
25 well. And we've updated our website to make a variety of

1 information available.

2 Again, Ionic Digital is working hard to get -- to  
3 become a listed company so that Creditors have liquidity.  
4 Given all of the recent you know, questions on the docket,  
5 or letters on the docket, we wanted to take this opportunity  
6 to reintroduce Ionic to the Court and to the constituency  
7 here, as we work through these issues.

8 If it would be helpful for the Court in future  
9 hearings to hear from Counsel or the CEO or management of  
10 the company, we can make that possible. And that was all I  
11 had for today in terms of my update, Your Honor, so I  
12 appreciate your time. Thank you.

13 THE COURT: Let me ask you a few questions.

14 MR. PESCE: Sure.

15 THE COURT: Can you provide any estimate of the  
16 time to complete the selection and hiring of the independent  
17 auditors? Once the auditor is selected for what time  
18 periods are audited financial statements required? Is there  
19 an estimate of how long it will take a new auditor to  
20 complete the necessary audit reports in order to move  
21 forward with the listing process?

22 MR. PESCE: Sure. I can answer most of those  
23 questions, Your Honor, and if I need to come back or provide  
24 that at the next hearing or otherwise, I'm happy to do it.  
25 We expect to sign an engagement letter with the new auditor

1 in roughly the next two weeks. And we expect that the  
2 auditor, assuming its independence work is done, would then  
3 be on the job, ready to start doing work.

4 We're hopeful that later this fall, updated  
5 securities filings with the latest financials, including  
6 audited financials could be filed with the SEC and shared  
7 with NASDAQ. We anticipate at this time that the public  
8 listing would happen sometime, it looks like early --  
9 sometime in 2025. So not this calendar year. The  
10 management team on which financials need to be formally  
11 audited or reviewed to finalize that process following --

12 THE COURT: What's the -- I did ask the question  
13 about what time periods are -- will audited financials be  
14 required for? I mean, how far back will be the new auditor  
15 have to go? And for what time period will he be delivering  
16 an audit report?

17 MR. PESCE: My understanding that a formal audit  
18 was completed for -- through the end of 2023, that the final  
19 month of 2024 was not formally completed. The new auditor  
20 would need to work with the outgoing auditor to transition  
21 those work files and essentially sign off on the proceeding  
22 work.

23 And then, it's my understanding, due some audited  
24 work for the beginning of -- or for the post-emergence  
25 period, to do the listing. I'll speak to the management

1 team to get a more specific answer for you on which months  
2 have been completed or not.

3 THE COURT: All right, thank you. We have at  
4 least one hand raised. Tony Vejseli. I'm sorry if I've  
5 mispronounced your name. Go ahead, please.

6 MR. VEJSELI: Tony Vejseli. I'm a Creditor and  
7 shareholder of Ionic. I have a lot of issues with Ionic,  
8 obviously, and you've seen from the letters that were  
9 written, the biggest one obviously being around Hut 8. This  
10 is a material change to the plan.

11 The liquidity provision was nothing close to the  
12 tech shareholders Creditors. I don't think a lot of people  
13 believe that they can list on NASDAQ. I, being one of them,  
14 didn't believe they could. They made a lot of promises.  
15 They didn't deliver on any of them so far.

16 They've had eight months since we emerged out of  
17 bankruptcy, and they haven't done anything. We have a  
18 revolving door of Board Members. The latest ones they  
19 approved have a terrible track record, the stocks that they  
20 are on the Board of are not doing well, you know, to be  
21 generous on those stocks.

22 They have no mining experience. They have nothing  
23 of relevant -- the CEO quit. The new CEO, the interim CEO  
24 has been on the job for like a week. He doesn't know what's  
25 going on. He's never been in mining before. He's a CFO.

1 He doesn't have any experience in data centers. This  
2 company is kind of going backwards, it seems like. And I  
3 think we're on pace to basically lose our investment.

4 I would like, and we're in the process of filing a  
5 shareholder vote. We plan to remove the Board, essentially.  
6 We're about -- I think we're 60, 65 percent of the way  
7 there, requiring all the shares needed to call the vote.  
8 But that's basically what shareholders are about to do at  
9 this point.

10 THE COURT: Right. Mr. Sarachek, do you want to  
11 be heard?

12 MR. SARACHEK: Sure. Thank you, Your Honor. Joe  
13 Sarachek with the Sarachek Law Firm. I'd just like the  
14 Court to know, we've been contacted by numerous shareholders  
15 about forcing a liquidation of these assets. I know this  
16 issue was before you. I know it's not formally before you  
17 now. But numerous shareholders in recent weeks have  
18 contacted us. And we're reviewing the documents and will  
19 take appropriate action. Thank you.

20 THE COURT: All right. I should've -- Mr. Pesce,  
21 I should've asked this, and that is, the actual performance  
22 of the mining site, because at least one is operating, am I  
23 correct? One is still being built out?

24 MR. PESCE: That's correct. Our Midland site is  
25 operating as it was during the bankruptcy. Now, you know,

1 with the new management arrangement. Our second site that  
2 is contemplated right now is called the Cedarvale site.  
3 It's located near Odessa, Texas. Hut 8 is the general  
4 contractor.

5 The project has effectively four identical  
6 buildings. The first building became operational roughly  
7 two weeks ago. The final three buildings are in the midst  
8 of construction. Those are -- I think you put this in the  
9 press release. There's a requirement that they have to be  
10 completed by December the 17th. And the expectation and  
11 hope is that they're completed sooner than that subject to,  
12 you know, me running a safe, orderly process for that.

13 Finally, under the Hut agreement, it's anticipated  
14 that Hut might provide -- they might identify other sites  
15 that Ionic would consider develop -- or developing, funding  
16 and having generate returns for shareholders. I'll rely on  
17 the press release at some of the more recent performance  
18 information there in terms of that, but that's the -- that's  
19 where we are in terms of operations.

20 And as Mr., of course, you know, I'll, you know,  
21 butchered his last name, as Tony V. said, we do have a new -  
22 - we have a new CFO. And that individual is acting as our  
23 interim CEO. And he and our Board are overseeing a search  
24 for a new full-time CEO to take us through the listing and  
25 as a standalone company.

1                   There's other parts of that commentary that I'm  
2 happy to also address other than the operational point that  
3 you raised, Your Honor.

4                   THE COURT: No, I am interested in the operational  
5 point. Is the operation cash flow positive or negative at  
6 this point? What can you tell everyone about that?

7                   MR. PESCE: Sure, yes. The company is cash flow  
8 positive. The company has a significant balance of cash and  
9 of Bitcoin. In the press release, we put the figures for  
10 what our Bitcoin holdings are. They were roughly, you know,  
11 \$100 million in Fiat value. So we have significant cash on  
12 Bitcoin that we have not yet begun to liquidate to fund  
13 operations or construction.

14                  We want to hold -- you know, we want to consider  
15 that carefully, but we have a significant liquidity to see  
16 through the construction and do what the company needs to  
17 do.

18                  THE COURT: Thank you. Mr. Dixon?

19                  MR. DIXON: Hi, Simon Dixon, pro se Creditor.  
20 Yeah, we were very disappointed that such a significant  
21 decision was made without really any communication with our  
22 shareholders. We were hoping that the liquidity provision  
23 would protect us.

24                  Personally, I introduced a mining team with over a  
25 decade of experience. They're working half an hour away

1 from the location. They're a more experienced mining team  
2 than anybody that's currently on the Board that has no  
3 experience in mining. And for whatever reason, none of  
4 those opportunities were pursued.

5 And then, it turns out that the liquidity  
6 provision with Hut 8 was you know, terminated, which was  
7 meant to protect us, so that we could be more profitable. I  
8 just had a quick question as well, because we seeded the  
9 company with \$225 million cash, and the recent press release  
10 said there's \$200 million cash. And yet, we're meant to be  
11 profitable.

12 And does that include the -- I think another press  
13 release said we had 1,900 Bitcoin. Does the \$200 million  
14 cash, is that on top of the Bitcoin? Because that would  
15 make us profitable? Or is the \$200 million cash included in  
16 the Bitcoin, which would not make us profitable?

17 THE COURT: Mr. Pesce, are you able to respond to  
18 that?

19 MR. PESCE: Yeah, yeah, just a couple of quick  
20 points here. And full disclosure, you know, Mr. Dixon was  
21 identified as an observer to the new Board. We were unable  
22 to reach terms with Mr. Dixon on the trading policy, given  
23 his other activities. So he's not formally joined the Board  
24 as an observer, but you know, we hear regularly from Mr.  
25 Dixon.

1           Let me just make two quick points here. I think  
2 there's a fundamental disconnect about this liquidity  
3 provision. The liquidity deadline was there to protect  
4 shareholders so that it would -- we could effectively break  
5 glass in case of emergency of going into June 1st.

6           We knew there was a radical problem that would  
7 prevent a listing from occurring as expected. Before that  
8 date, the company's Board did determine that it was  
9 necessary to protect shareholders by providing the  
10 termination notice.

11           The Board was ready to separate from Hut. And  
12 again, Hut 8 will contest this, but the Board was fully  
13 ready to separate from Hut and move to other arrangements if  
14 necessary. Ultimately, the delivery of that notice and the  
15 liquidity deadline itself, as expected, did serve its  
16 purpose. It provided a very powerful tool for Ionic's Board  
17 to ensure that Hut was -- we got the best deal possible from  
18 Hut, and that is why we re-negotiated the deal.

19           So the suggestion this isn't really for the  
20 benefit of shareholders is not correct. We negotiated  
21 numerous provisions that we weren't able to secure during  
22 the bankruptcy to improve the contract.

23           In terms of you know, other shareholder  
24 engagement, I'm just happy to say, you know, look, the  
25 company is a fiduciary for shareholders, if shareholders

1 want to engage in (indiscernible) Counsel and advisors,  
2 they're ready, willing and able to address that.

3 There's been a lot of commentary on social media.  
4 There's been indirect communications with some of our Board  
5 Members. For parties that have contacted the company, we  
6 told them to direct their communications to the Chief Legal  
7 Officer, if they have any kind of demand or interest in some  
8 type of transaction.

9 I will note that at the time being, you know, we  
10 generally don't comment on market rumors or any potential  
11 merger acquisition or takeover activities. You know,  
12 significant asset sale or liquidation, as one the speakers  
13 mentioned, would require an evaluation process by the Board.

14 There's no individual shareholder or group of  
15 shareholders that we're aware of that has close to the  
16 voting power necessary to force any kind of sale or change  
17 at the Board. And all that being said, but we're not  
18 engaging in any kind of M&A activity.

19 And as I mentioned, though, we do have an  
20 independent board and advisors who are prepared to evaluate  
21 any legitimate proposal from a party that's willing to abide  
22 by the typical rules of the road for a public company, which  
23 we are about to become. So hopefully that's responsive to  
24 the various comments there.

25 MR. DIXON: Sorry, would you be able to answer

1 about the 200 --

2 THE COURT: No, stop, stop. Mr. Dixon, quiet.

3 You had your chance. We'll take one last comment. The hand

4 of Mr. Sarkissian, Mike Sarkissian, is raised. Go ahead.

5 I'll recognize you.

6 CLERK: I am (indiscernible).

7 THE COURT: Go ahead.

8 MR. SARKISSIAN: I apologize. I did not mean to  
9 raise my hand, Your Honor.

10 THE COURT: Okay.

11 MR. SARKISSIAN: But I am also interested in the  
12 question that Mr. Dixon asked, in terms of how that  
13 accounting works with the Bitcoin and cash, if it's additive  
14 or if it's inclusive of each other. So I would like to -- I  
15 mean, I could use this mistake on my part to reiterate his  
16 question.

17 THE COURT: Mr. Pesce, is there any further light  
18 you can shed on that question?

19 MR. PESCE: My understanding is the cash balance  
20 is roughly 200 -- or the liquidity available to the company  
21 of cash and Bitcoin is roughly \$200 million. I don't  
22 believe that they are at -- there's an additional \$200  
23 million of cash. So it's a total BTC and cash of roughly  
24 \$200 million.

25 THE COURT: All right, thank you very much. Let's

1 move onto the next item on the agenda, which is the update  
2 on avoidance actions. Who's going to address that?

3 MR. PESCE: I'll pass the mic here.

4 MR. HERSHY: Yeah, good morning, Your Honor. Sam  
5 Hershey from White & Case for the Litigation Administrator.  
6 So two of the next items on the agenda are the status report  
7 and the procedures motion.

8 They raise separate issues, and so I plan to  
9 address them separately. But I do want to note that they  
10 will likely affect each other, and that we'll have to  
11 probably amend the procedures order, depending on what the  
12 Court determines regarding common issues and how we should  
13 schedule litigation of those common issues.

14 But I'll start with the status report. Your Honor  
15 asked some questions about service at the last hearing. I  
16 believe we've addressed those. If Your Honor has any  
17 further questions, I'm happy to address them now, but  
18 otherwise, I won't repeat our answers, and I'll move onto  
19 Your Honor's --

20 THE COURT: Mr. Hershey, just -- there's a lot of  
21 people -- there's like 180 people on Zoom today. And so,  
22 just very briefly address, even though it may be repetitive,  
23 just address the service issue, if you will.

24 MR. HERSHY: Of course, Your Honor. I'm happy  
25 to. So we have -- as of August 1st, we served all US

1 Defendants. The Defendants split almost 50/50 US and non-  
2 US. And all US Defendants have been served. We are in the  
3 process of serving the foreign Defendants. There are a  
4 number who have accepted service, and some who have been  
5 served.

6 But we still have a ways to go, just given the  
7 requirements of complying with the Hague Convention and you  
8 know, other issues involved in serving non-US Defendants.  
9 But that process is underway. We expect that within, I'm  
10 going to say four to six months, we should have, you know,  
11 the -- I'd say the majority of foreign Defendants served.

12 THE COURT: All right, thank you.

13 MR. HERSHY: On the common issues. So Your Honor  
14 asked us to consider common issues that could apply across  
15 all Defendants or large numbers of Defendants. We gave it a  
16 lot of thought, and in our status report, we identified  
17 certain common issues, as well as an order in which to  
18 address them.

19 And the order is important, because some of these  
20 issues, we believe can be dealt with very quickly as a  
21 matter of law. And so, the estate and Defendants should  
22 have the benefit of having those issues decided quickly, see  
23 how it affects their litigation position, and then we can  
24 move onto what we've called phase two, which are issues that  
25 are difficult, complex, in some cases, likely matters of

1 first impression.

2 So here's what we propose. And I'll note that Ms.  
3 Kovsky, on behalf of her group filed a response yesterday.  
4 Mr. Besikof, on behalf of his group, joined that response  
5 this morning. And we have broad agreement with them, and  
6 we've actually, as I'll discuss right now, we've made a few  
7 modifications to our proposal to try to expand that  
8 agreement.

9 But there are still a few points of disagreement,  
10 which I'll highlight after I set forth what we would  
11 propose. So we would propose that it -- first, there be a  
12 phase one of litigation for the following issues.

13 First, extraterritoriality. And per Ms. Kovsky's  
14 suggestion, we would include in that specific personal  
15 jurisdiction over non-US Defendants. And by specific  
16 personal jurisdiction, I mean whether we have personal  
17 jurisdiction as a result of those parties' agreement to the  
18 terms of use.

19 Second, whether the litigation administrator is  
20 entitled under Section 550(a) to recover the assets that  
21 were transferred off the platform or those assets' current  
22 value. And third, in phase one would be the proper method  
23 for calculating new value under Section 547.

24 So that's what we would propose litigating in the  
25 first round. We would then propose a phase two of

1 litigation to follow after those first round issues are  
2 litigated and decided by the Court. And that phase two  
3 would be first, the objective prong of the ordinary course  
4 of business defense.

5 In other words, not any individual Creditor's  
6 personal course of business with Celsius, but an examination  
7 of the cryptocurrency industry in which Celsius operated,  
8 and the terms of use under which it operated. Second would  
9 be the 546(e) Safe Harbor Defense.

10 THE COURT: That's the horizontal test that you  
11 proposed to deal with?

12 MR. HERSHY: Exactly, Your Honor. Yes.

13 THE COURT: Okay.

14 MR. HERSHY: Second would be the 546(e) Safe  
15 Harbor Defense. And third, per Ms. Kovsky's suggestion we  
16 will agree to move what we had put as a phase one issue, but  
17 we're happy to treat as a phase two issue, which is whether  
18 the Litigation Administrator stated a *prima facie* claim for  
19 preference avoidance, particularly as to the Debtor's  
20 insolvency, which we recognize could potentially raise fact  
21 issues.

22 Now, as I said, there is broad agreement among us  
23 and Ms. Kovsky and Mr. Besikof. And the -- you know, based  
24 on their response, I think there are only a few areas of  
25 disagreement in terms of how we should sequence these issues

1 that I'll highlight now.

2 Mr. Kovsky and Mr. Besikof argue that we should  
3 save all issues regarding damages until a new final phase,  
4 which they've dubbed phase three, which they say should come  
5 only after the Court has determined whether Defendants  
6 actually have liability. And in particular, I think that  
7 they're focused on whether we're properly calculating new  
8 value, and whether we can recover the assets themselves that  
9 are equivalent value.

10 Their argument is that damages are normally  
11 litigated after liability is determined, and it would  
12 prejudice Defendants to make them litigate damages first.  
13 And look, it is correct that damages are normally litigated  
14 after liability is determined. But this is not a normal  
15 case.

16 Here, we have 2,500 cases, all of which will  
17 participate in mandatory mediation. And I can tell, Your  
18 Honor, we've started those mediation discussions. We have a  
19 long track record now of settlement discussions. And in  
20 many cases, we aren't even in the same universe as the  
21 Defendants regarding the amount of damages to which we  
22 believe we are entitled that form the basis for a mediation.

23 And that is because many Defendants believe, as a  
24 matter of law, that we are not entitled to pursue the  
25 withdrawn assets or their current value, that we're

1 calculating new value wrong, that the plan prohibits us from  
2 pursuing the damages we're asserting, all these issues that  
3 we would like to litigate in phase one.

4 And keep in mind, we had a very robust pre-  
5 litigation settlement process that resulted in thousands of  
6 Defendants settling. These are the Defendants who have  
7 chosen not to settle. And in large part, that is because of  
8 their beliefs regarding what we have put into the phase one  
9 issues.

10 So if we're going to have effective mediations, we  
11 need to resolve those issues now. Otherwise, we'll be  
12 launching into a mandatory mediation process without these  
13 issues decided, and the mediation will in large part for  
14 many people be doomed from the start, simply because we  
15 can't agree on what the realm of possibility is in terms of  
16 damages, if we prevail in the litigation.

17 THE COURT: I take it then, Mr. Hershey, you agree  
18 with Ms. Kovsky and Mr. Besikof that prior to mandatory  
19 mediation taking effect, the Court should resolve certainly  
20 what you've identified as the phase one issues. There may  
21 be some disagreement between you and the two of them as to  
22 where issues fall, which are phase one, which are phase two,  
23 etc. Do I understand correctly so far?

24 MR. HERSHY: Yes, Your Honor. I think that makes  
25 a lot of sense. And you know, we think these issues can be

1 briefed very quickly. I mean, Mr. Besikof and Ms. Kovsky  
2 will argue that it's prejudicial to Defendants to litigate  
3 these issues, when they may not have liability.

4 But these are all issues that are -- they're  
5 matters of law. There's -- it's just what the plan says,  
6 what the Bankruptcy Code says, what the case law says. And  
7 we think there's no discovery needed. We can brief them  
8 quickly, get a decision from Your Honor.

9 And then, yes, I think mandatory mediation makes  
10 sense at that point. Obviously, if parties wanted to  
11 mediate before phase one starts, they certainly can. We're  
12 absolutely open to that. But yes, these issues are really  
13 threshold issues for having productive mediations.

14 THE COURT: All right. Anything else you want to  
15 say at this point? I'll give you further chance to respond.

16 MR. HERSHY: Thank you, Your Honor. No, not at  
17 this time. I'm happy to hear from other parties.

18 THE COURT: Ms. Kovsky?

19 MS. KOVSKY-APAP: Good morning, Your Honor, Deb  
20 Kovsky on behalf of the Defendants and the Adversaries  
21 listed at Docket Number 7601 in our notice of appearance.

22 THE COURT: How many clients are you up to at this  
23 point?

24 MS. KOVSKY-APAP: So I think the ones that have --  
25 and just to be clear, we filed a notice of appearance for

1 those for who we have authority to accept some risk, or  
2 those who confirm that they have been served and authorized  
3 us to disclose that they're represented parties.

4 I believe it's 360 and change. We have  
5 approximately 100 or 115 additional clients in our group who  
6 are non-US, who have not been served yet, and for whom we do  
7 not have authority to accept service.

8 THE COURT: Okay, go ahead.

9 MS. KOVSKY-APAP: So I wanted to point out first  
10 that it was Mr. Hershey's client that was demanding that  
11 mediation take place before the Plaintiff has to respond  
12 substantively to any of these issues.

13 I'm really not sure how exactly under the proposed  
14 procedures, Mr. Hershey imagines that these issues would be  
15 brought before the Court in light of the mediation  
16 procedures, which by the way, we spent a great deal of time  
17 and energy negotiating with the White & Case and ASK teams.

18 And I do want to thank them for their flexibility  
19 and responsiveness so we could get to an agreed mediation  
20 order. But that order clearly contemplates that we can have  
21 pre-response mediation. So that's the path that most  
22 likely, my entire group, and I don't want to speak for Mr.  
23 Besikof. I believe his colleague, Mr. Papandrea is  
24 attending the hearing on behalf of his group.

25 But we're likely to mediate before responding to

1 any of these issues. So saying, well, we need to have  
2 damages go forward in phase one really doesn't make any  
3 sense. I also want to point out that I think Mr. Hershey is  
4 mistaken on a number of points.

5 I don't think it's that many Defendants believe as  
6 a matter of law that their damages are kept, so much as many  
7 Defendants believe as a matter of law that they have  
8 absolute defenses to liability, and that there's not going  
9 to be a more productive mediation if damages are litigated  
10 first.

11 What's going to happen is, the price to sell may  
12 change, but the number of parties willing to settle won't  
13 because the issue is that liability is still hotly  
14 contested. And in fact --

15 THE COURT: But I understand -- Ms. Kovsky, I  
16 understood Mr. Hershey not as putting damages as a phase one  
17 issue.

18 MS. KOVSKY-APAP: He's absolutely putting damages  
19 as a phase one issue. That is our primary point of  
20 disagreement. The point that he wants to determine first,  
21 the measure of damages that are available to the Plaintiff  
22 under 550(a) and in terms of how the value is calculated, so  
23 that it -- he wants to get a ruling from the Court saying,  
24 you can throw the definition of withdrawal preference  
25 exposure under the plan out the window.

1                   We can go after you for something completely  
2                   different that was never disclosed that you didn't vote on.  
3                   And if he gets that ruling, that -- that's the damages issue  
4                   that we've been debating back and forth, Mr. Hershey and I,  
5                   and Mr. Besikof.

6                   That's what he wants to have heard first. That's  
7                   what Mr. Besikof and I, and again, I don't mean to speak for  
8                   him, but in the Troutman Defendants' response to this  
9                   statement regarding potential litigation procedures, we  
10                  don't believe it's appropriate or efficient to force the  
11                  parties to litigate how much the Plaintiff can recover  
12                  before it's determined whether the Plaintiff can recover  
13                  anything at all.

14                  And we do understand that reverse bifurcation has  
15                  been used in some cases, typically in the asbestos context,  
16                  but the case law is really clear, that when issues of fault  
17                  and liability are hotly contested, reverse bifurcation does  
18                  not advance judicial efficiency. It'll prejudice our  
19                  clients.

20                  They'll have to spend time and money litigating  
21                  how much they owe before they have an opportunity to contest  
22                  whether they owe it at all. Mr. Hershey's client is sitting  
23                  on a massive war chest. They can litigate till the cows  
24                  come home. My clients are individuals who withdrew their  
25                  retirement savings, their college tuition, their mortgage

1 payments.

2 They don't have unlimited funds to be able to  
3 litigate. And if they have the opportunity first to contest  
4 liability before getting to damages, that's the more  
5 efficient path, forcing them to do it in reverse prejudices  
6 them, and it shouldn't be contemplated.

7 THE COURT: All right, Mr. Besikof?

8 MR. PAPANDREA: Hi, good morning, Your Honor.

9 THE COURT: You're the one who's speaking on -  
10 Just say on line with Ms. Besikof.

11 MR. PAPANDREA: I am, yes. Michael Papandrea from  
12 Lowenstein Sandler, same firm as Mr. Besikof, on behalf of -  
13 - well, let me take a step back. I filed a motion for Pro  
14 Hoc Vice admission this morning at Docket Number 7643. And  
15 we also filed a, as Counsel noted, a joinder for the  
16 statement of response that the Troutman firm filed at 7 --  
17 Docket Number 7642.

18 And we're appearing today on behalf of the  
19 approximately 130 or so Defendants in the adversary  
20 proceedings listed on the exhibit to the joinder that we  
21 filed. There might be a few others out there that are not  
22 out -- on that list for the same reason that Counsel had  
23 mentioned with respect to her clients, that we weren't  
24 authorized to accept service or what have you. But as of  
25 right now, the number is at somewhere around that 130 range.

1 I'm not going to belabor the point. Counsel for  
2 the other Defendants out there articulated it quite -- very  
3 eloquently. The real bottom line is, it puts the cart  
4 before the horse, to put measure of damage type issues and  
5 calculation of new value at the forefront in phase one.

6 It strips the Defendants of the ability to  
7 actually assert their defenses to liability. And we  
8 question, just like our, you know, our colleague on the same  
9 side of the V, I should say. We question whether it would  
10 even facilitate productive mediation because it, you know,  
11 ultimately, depending on the outcome of how that, you know,  
12 it -- that issue goes, it just pushes the number to settle  
13 perhaps further out, despite the fact that liability, right,  
14 hasn't even been made an issue as of yet.

15 So and to the extent it does potentially  
16 facilitate settlements, it's probably purely in a  
17 prejudicial way to our clients, the Defendants, who get to  
18 see the potential ceiling on their damages go up before  
19 they've had any chance to actually spend time and resources  
20 defending liability in the first instance. And so, for that  
21 reason, we join in the response to the statement regarding  
22 the preference actions.

23 THE COURT: Thank you, Mr. Papandrea.

24 Mr. Goldstein?

25 MR. GOLDSTEIN: Thank you, Your Honor. Harley

1 Goldstein on behalf of Mr. Steele. What Ms. Kovsky and Mr.  
2 Papandrea said has a lot of merit, but I would like to take  
3 a step back here since this goes into the avoidance action  
4 procedures. I want to address all of the smaller issues  
5 that I had erased, but I do want to address this issue.

6 I am quite frankly a little confused and a little  
7 offended by this whole discussion.

8 THE COURT: Keep your -- keep that out of this  
9 discussion. If you've got substantive things you want to  
10 talk about...

11 MR. GOLDSTEIN: The substantive things I'd like to  
12 talk about, Your Honor, if I may, are that --

13 THE COURT: Well, I will let you speak if you  
14 don't attack others about what approach they're taking.  
15 Just make your point or I'm going to pass on to the next  
16 speaker.

17 MR. GOLDSTEIN: My point is that most of the  
18 defendants that aren't represented by the two larger groups  
19 of defendants have had no communication offered whatsoever  
20 with the plaintiff. I think it's fundamentally unfair that  
21 the plaintiff should hand-pick two groups of attorneys  
22 representing a number of defendants but not include any of  
23 the other defendants in any of these discussions.

24 THE COURT: Any other points you want to make?

25 MR. GOLDSTEIN: Not until we get to the

1 substantive issues, Your Honor. That's my big picture point  
2 with regard to this.

3 THE COURT: Go ahead and make whatever other  
4 points you want to make now.

5 MR. GOLDSTEIN: I think it's the movant's burden  
6 to address those first, Your Honor. They were contained in  
7 our pleading.

8 THE COURT: Mr. Goldstein, if you want to address  
9 them, address them now.

10 MR. GOLDSTEIN: Okay, Your Honor. I certainly  
11 will. Thank you.

12 With regard to the amounts at issue, a lot of the  
13 procedures put us in categories based on those amounts. And  
14 as you heard from the last two groups of defendant counsels,  
15 those are in dispute. A lot of things that hinge on those  
16 are based on the Plaintiff's calculation of where they fall.  
17 And I think as you know, everybody knows, the price of  
18 cryptocurrency goes up and down. It's completely  
19 speculative and there's been no ruling that that's the  
20 appropriate measure. So I think splitting up what specific  
21 procedure are based on which of those you fall into when  
22 they weren't fiat currency I think is inherently problematic  
23 without a ruling on that issue exactly.

24 THE COURT: I don't understand the point you're  
25 just making.

1                   MR. GOLDSTEIN: In the medication procedures,  
2 certain liability for fees and certain other procedures --  
3 for example whether they should be in-person or whether they  
4 should be via video conference, because my client is very  
5 far from New York, hinge on the amount that the plaintiff  
6 asserts, the defendant is liable for. If that's a threshold  
7 issue because they're trying to tie it to cryptocurrency as  
8 opposed to fiat currency, then it's not really a fair  
9 barometer to fit them in one category or another based on an  
10 issue that hasn't been decided by the court yet.

11                  THE COURT: Well, you raised the issue, which I  
12 decided in January -- I'm now blanking on whether it was  
13 2023 or 2024 -- I established and held that the Earn  
14 accounts were property of the estate. You seem to disagree  
15 with that. That was the Court's ruling. It's at 647 B.R.  
16 631. That's not being revisited.

17                  MR. GOLDSTEIN: Your Honor, my client was not a  
18 party to that, to be fair.

19                  THE COURT: Mr. Goldstein, I am not revisiting --  
20 that was a very broad ruling. It was lots of people had an  
21 opportunity to participate in it. That is the law of the  
22 case.

23                  MR. GOLDSTEIN: I understand that, Your Honor.  
24 But should we decide to appeal that issue, we have the right  
25 to with regard to our case.

1                   THE COURT: Well, did you appeal from the  
2 confirmation?

3                   MR. GOLDSTEIN: We were not a party to that. We  
4 had not subjected ourselves to the bankruptcy court's  
5 jurisdiction. There was no proof of claim filed. We  
6 haven't been served yet.

7                   THE COURT: The 1141(d) applies whether or not you  
8 have filed a proof of claim. The Court made a determination  
9 in a published opinion that the Earn accounts were property  
10 of the estate. I'm not -- you know, if you think you have  
11 appellate rights when the time comes and you think you can  
12 pursue them, go ahead and pursue them.

13                  You argued in your objections that -- you  
14 complained because the defendants are prohibited from filing  
15 any motions under Rules 12(c) or 56 until after the  
16 mediators file reports. I think that Mr. Hershey and Ms.  
17 Kovsky more or less have agreed that there are common issues  
18 of law that should be resolved before mandatory mediation,  
19 not voluntary mediation, but mandatory mediation kicks in.  
20 Mr. Hershey, am I correct in that?

21                  MR. HERSHHEY: You are absolutely correct, Your  
22 Honor, yes.

23                  THE COURT: All right.

24                  MR. GOLDSTEIN: Your Honor, I think my issue with  
25 that is that they didn't have to file a substantive response

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1 to that. So we were filing pleadings, but they weren't. We  
2 weren't allowed to take discovery on it, either.

3 THE COURT: You complained in your objection that  
4 it was unfair that you had to choose from a list of  
5 plaintiff-selected mediators. I have a couple of comments  
6 on that for the benefit of all of you. I think there were  
7 17 names on the list you submitted, Mr. Hershey.

8 My own view -- I'm not ruling on this now -- I  
9 think it's too many. There were also names on the list of  
10 very able lawyers who represented parties in interest in  
11 different phases of the Celsius case, in adversary  
12 proceedings or otherwise. I would exclude any lawyers who  
13 have prior representation of clients during this case in  
14 contested matters or adversary proceedings. I don't want  
15 later conflicts issues arising. They are very able lawyers.  
16 I'm not questioning their ability to serve. Just as a  
17 matter of course I'm not going to permit names from -- of  
18 others who represented clients in the case.

19 Third, particularly if we move forward with  
20 hearings on substantive issues initially before a mandatory  
21 mediation kicks in -- I keep saying mandatory because I  
22 think you were very successful with voluntary mediations  
23 before the adversary proceedings were filed. And whether it  
24 was Ms. Kovsky or anyone else, to the extent they wish to  
25 engage in voluntary mediation, the better frankly. But

1 that's not mandatory mediation.

2 I would -- I think that these procedures need to  
3 be revised to give defendants a period of time to suggest  
4 other possible names of anyone appearing on the district's  
5 register of mediators. Okay.

6 I am going to reserve the right to cut names from  
7 the list. The reason being my experience, as indicated in  
8 large cases, there's a real benefit to having a group of  
9 mediators who develop working knowledge of the case and the  
10 issues in it. I feel strongly about that. I think that the  
11 defendants deserve an opportunity to suggest alternative  
12 names, particularly if we're moving forward with litigation.  
13 On briefing and decision on certain common issues of law in  
14 particular, I don't think it will slow down -- if people  
15 want to engage in voluntary mediation, they can work with  
16 you and see whether you can agree there are people on the  
17 list. There's no prohibition on agreeing with someone else  
18 in voluntary mediation. Okay.

19 So I may well pare down the list at some point,  
20 not at this point. I think that one of the things that I've  
21 always observed is many defendants have concern that a  
22 plaintiff has sort of cherry-picked the list of row  
23 plaintiff people to serve as mediators. They want an  
24 opportunity to have a say in who the mediators are. I agree  
25 with that. Okay. The only thing I'm saying is I think 17

1 is too many. What the right number is, I don't know. I'm  
2 not saying for now.

3 So I think you ought -- what you ought to do is --  
4 what I hope to come out of today with Mr. Hershey is an  
5 agreement of at least some of the common issues for  
6 briefing. I want to hear -- it may be that I want to hear  
7 some more from counsel as to which issues they think should  
8 be in phase one of litigation, which should be phase two, et  
9 cetera.

10 I think there is -- at least my reading of the  
11 papers, there's large agreement on a group of issues that  
12 should be phase one litigation issues. Let's get them  
13 clearly defined, try and get an agreed briefing schedule for  
14 them to the extent -- and, you know, I think my experience  
15 in the Celsius case was these kinds of issues got worked out  
16 with -- you know, yeah, they're disagreements, but you --  
17 you know, there was some give and take. And when we had the  
18 -- the issue of who do the Earnings accounts to, there was large  
19 agreement on the schedule. There really -- that didn't  
20 become an issue. So I want you and other counsel to try and  
21 agree on the framing of the precise issues, a briefing  
22 schedule for them. I will permit one further filing of --  
23 if you think that some additional issue defined as you wish  
24 ought to be in phase one, if Ms. Kovsky or other counsel  
25 believe no, they shouldn't, I will consider those before

1 finalizing the list. But I think we don't have to hold off.  
2 It seemed to me there was largely agreement on phase one  
3 issues. Now we'll work on the briefing schedule for them.  
4 Okay.

5 The other thing, I don't want to cut off  
6 opportunity for counsel to participate, but I don't plan to  
7 have 30 briefs from defendants on the same issue. You need  
8 to get defendants, whether Ms. Kovsky or others, need to try  
9 and coordinate it. So to the extent possible, have common  
10 briefings so the Court isn't reading 30 briefs on the same  
11 issue. It will -- you know, a simple statement that you  
12 join the brief filed on behalf of the group will suffice.  
13 Okay.

14 MR. GOLDSTEIN: Do you want me to continue with my  
15 issues, Your Honor?

16 THE COURT: Go ahead.

17 MR. GOLDSTEIN: Your Honor, if the plaintiff has  
18 represented that they view the expenses of mediation as  
19 minimal, then they should pay it, as is fairly typically  
20 with preference cases.

21 THE COURT: It's not fairly typical. It's not  
22 fairly typical. I have --

23 MR. GOLDSTEIN: In many districts it's --

24 THE COURT: Stop. I have some difficulty with  
25 some of the breakpoints and some of the specific amounts.

1 Don't think that starving a mediator from doing everything  
2 needed to be done to bring a settlement is going to work to  
3 the disadvantage -- it's going to work to the advantage of  
4 the defendants. It doesn't.

5 I agree that the costs need to be manageable.  
6 I'll just tell you it's a nonstarter. I am not going to  
7 order that all of the fees be paid by the plan  
8 administrator.

9 MR. GOLDSTEIN: Your Honor, there's an awful lot  
10 of briefing by the defendants too on top of that. We're not  
11 getting paid from the kitty, we're getting paid from our  
12 clients.

13 THE COURT: I am not going to order the plan  
14 administrator to pay the entire costs of the mediation.

15 MR. GOLDSTEIN: Understood, Your Honor.

16 THE COURT: You want to be able to litigate issues  
17 in advance, and I'm saying there is going to be litigation  
18 of issues in advance.

19 MR. GOLDSTEIN: Okay.

20 THE COURT: If you hit a home run, well, it may  
21 end at that. Okay?

22 MR. GOLDSTEIN: Okay.

23 THE COURT: But mediation costs -- I'm not saying  
24 -- I'm not ruling how what exactly the split should be or  
25 what the breakpoints are, but it's not going to be a free

1 ride for the defendants in mediation.

2 There is going to be -- after the Court resolves  
3 certainly phase one litigated issues, there is going to be  
4 mandatory mediation. I believe I have the authority to  
5 order it. I believe I have the authority to order a split  
6 in the mediator's fees. The law in this district and this  
7 circuit supports those conclusions. If at an appropriate  
8 time -- I don't think it has to be now because I'm going to  
9 permit litigation of phase one issues before mandatory  
10 mediation kicks in -- I will put my reasoning down on paper.  
11 And if you don't like it, you can do what you want with it.

12 MR. GOLDSTEIN: I hear you loud and clear, Your  
13 Honor. I would hope that when making that determination of  
14 how much is attributable or what the appropriate amounts  
15 are, I would like to point out that the plaintiff in their  
16 pleadings liken this to participating in bidding procedures  
17 and the leeway that the court has in setting those. WE are  
18 not affirmatively coming and bidding here. We've been  
19 dragged into the court and sued. It's a very different  
20 situation. But I hear you loud and clear. Moving on to the  
21 next issue --

22 THE COURT: Those mediation fees will pale in  
23 comparison with the costs of litigating each claim to  
24 judgement. I am very concerned about the cost of mediation  
25 and I will be mindful of that when I rule. But it's not

1 going to be now. It is not going to shift the entire cost  
2 of mediation to the plan administrator.

3 MR. GOLDSTEIN: All right.

4 THE COURT: Any additional issues?

5 MR. GOLDSTEIN: Yes, Your Honor. The -- the issue  
6 with regard to the in-person versus the video conference and  
7 the arbitrary thresholds in their -- if there is ordered  
8 mediation and if we are talking about costs of paying, I  
9 certainly don't think it would be appropriate to -- to drag  
10 my client from far away into mediation.

11 THE COURT: Where is your client?

12 MR. GOLDSTEIN: My client is in Colorado.

13 THE COURT: Mr. Hershey, if you would address this  
14 issue of Zoom versus in-person.

15 MR. HERSHY: Of course, Your Honor. So I think  
16 Mr. Goldstein may misunderstand the proposed procedures. We  
17 were trying to protect defendants with low value. We said  
18 those mediations have to -- I assume -- if it's under  
19 \$500,000 that we're seeking, has to assume. That does not  
20 mean that everyone else has to be in-person. We're  
21 absolutely willing to work with defendants to see what works  
22 best for them.

23 I do happen to believe personally that in-person  
24 can be more effective. And so for very large -- defendants  
25 with very large exposure, we probably will press to do those

1 in-person. But it's not the case that if someone has  
2 exposure of \$500,001 they are required to appear in-person.  
3 That's not going to be our approach. And we're absolutely  
4 going to work with parties to do what makes sense.

5 THE COURT: All right.

6 MR. GOLDSTEIN: This goes back to what amount is  
7 at issue. Is it fiat currency or is it the fluctuating  
8 value of cryptocurrency?

9 THE COURT: Well, your client got crypto back,  
10 right?

11 MR. GOLDSTEIN: Well, certainly, Your Honor. But  
12 it was at another time. And it fluctuates up and down. Are  
13 you asking --

14 THE COURT: All right. We're not going to get  
15 into -- all right. Now is not the time to argue this issue.  
16 I understand that you and others are raising the issue.  
17 There will come a time when it needs to be resolved.

18 Any other last points you want to raise? There  
19 are other hands raised.

20 MR. GOLDSTEIN: The only other -- this is much  
21 less minor, but I'm going to raise it just to raise it.

22 So we were never served a motion despite reaching  
23 out to plaintiff's counsel and stating that we represented  
24 defendant. This is why I take on (indiscernible) the main  
25 case. So since we filed our limited objection to the

1 procedures, on a daily basis we've been flooded with let's  
2 just say a whole lot of -- certainly not as many as I'm sure  
3 Your Honor has read, but certainly a whole lot of pleadings.  
4 It's -- it runs up a lot of attorney's fees with things that  
5 have nothing to do with clients. So we would ask for --

6 THE COURT: Let me see if I can address this for a  
7 second, Mr. Goldstein.

8 Mr. Hershey, I've done this in other cases, and  
9 what I'd think seriously about doing here would be to create  
10 a docket labeled Celsius preference actions docket. I would  
11 require all pleadings related to preference actions to be  
12 filed in that docket. And to the extent that pleadings  
13 relate to specific cases within the docket, the pleadings  
14 should also be filed in the Celsius preference action docket  
15 and into the specific docket.

16 So any lawyers representing clients in preference  
17 actions can limit their review to the preference action  
18 docket. If pleadings are specific as to individual cases --  
19 so it would start with the caption this preference action  
20 docket, and then there would be -- if a pleading was limited  
21 solely to a specific action within it, it would have that  
22 caption with it and the filing would go there as well.

23 I don't believe that this will be increasing the  
24 cost for any of the defendants to be able to serve papers.  
25 You'll be able to file on the docket electronically. Any

1       lawyer who has registered to appear in the preference action  
2       docket can get it. If they're not interested, they don't  
3       have to look at it. I've done that successfully in other  
4       cases. The Celsius main docket is too long already and I  
5       think it may well be that -- and we'll talk about some of  
6       the other -- the employee preference actions. I'm open to  
7       creating specific dockets for those categories of cases as  
8       well. If a pleading is specific as to one of the cases  
9       within it, you just file it in both.

10           But that's what I have in mind. I would like you  
11       to try and work out the details of this with other counsel.  
12       I don't want all of these going in the main docket and then  
13       people have to hunt through and try and find things. Even  
14       this preference action docket will turn out to be very long.

15           MR. HERSHY: I'm sure you're right, Your Honor.  
16       And thank you very much for that guidance. We will discuss  
17       it internally and with counsel to defendants. Thank you.

18           MR. GOLDSTEIN: Thank you, Your Honor. I think  
19       that's a helpful solution.

20           THE COURT: Okay. Mr. Vaughan?

21           MR. VAUGHAN: Yes, Your Honor. It's Christopher  
22       Vaughan on behalf of the 34 defendants in ECF 7622.

23           First, Your Honor, we would just like to express  
24       our agreement with Ms. Kovsky --

25           THE COURT: The one thing, I don't know by docket

1 numbers. Okay?

2 MR. VAUGHAN: I'm sorry. Yes. It's a group of  
3 35. It's a group of 35 defendants, Your Honor. And I'll  
4 have the ECF number refrained from (indiscernible). I  
5 apologize.

6 But first, Your Honor, just we would like to  
7 express our agreement with Ms. Kovsky and Mr. Besikof's  
8 group that damages should be handled as a final issue.

9 In addition to the points raised by Ms. Kovsky and  
10 Mr. Papandrea, counsel for plaintiff misconstrues the  
11 reasoning for why many of these defendants did not  
12 (indiscernible) other claims ahead of time.

13 As recognized by the plan administrator in their  
14 filing last night, because of the original Celsius data  
15 breach in 2022 and in the second data breach that happened  
16 in these cases in relation to stretto, most of the emails  
17 sent out in relation to this case and the opportunity to  
18 settle them were auto-flagged as spam and were not received  
19 by potential defendants in these cases.

20 Accordingly, Your Honor, the vast majority of the  
21 defendants in these cases were not even aware of any of  
22 these ongoing until they received their paper sums in the  
23 mail. And this staff report also communicates that the --  
24 that they didn't upgrade their system for communication  
25 until August, which was after all of these cases were filed.

1 So the idea that all of these individuals did not settle  
2 their cases prior to plaintiff filing these exponentially  
3 higher WPE claims because they had no interest in settlement  
4 at all is a fallacy and it is contrary to the position taken  
5 by the plan administrator.

6 As a second point, Your Honor, as this Court  
7 recognized originally in Tribune and again in Sun Edison,  
8 the application of 546(e) presents a straightforward  
9 question of statutory interpretation, the type of which is  
10 appropriately resolved on the pleadings.

11 And while we recognize that the application of  
12 546(e) in the context of cryptocurrency is likely a matter  
13 of first impression such that some aspect of the analysis  
14 may require discovery and expert reporting before it can be  
15 resolved, there are other aspects that may be resolved by  
16 motion or that may be resolved in relating ongoing  
17 proceedings happening simultaneously to those being heard in  
18 this Court.

19 And we understand that this Court in the interest  
20 of only hearing certain arguments at one stage to the other  
21 may want to withhold its final decision in 546(e) until the  
22 larger defendant groups have fully fleshed out their  
23 arguments. And if those groups want to await their  
24 opportunity to make their 546(e) arguments in court, that's  
25 fine. But that should not foreclose other defendant groups

1 or pro se defendants from advancing their arguments via  
2 motion as the Court can take all of these arguments into  
3 consideration at the time that it deems most appropriate.

4                   But overall, Your Honor, the litigation strategies  
5 of defense groups, of larger defense groups should not be  
6 determinative of timing for all the defendants in these  
7 cases if they want to file a motion in relation to 546(e).

8                   THE COURT: I'm going to withhold (indiscernible)  
9 for now. But it seems to me that the 546(e) issues are  
10 going to be fact-intensive. You yourself recognize the need  
11 for expert reports. I don't plan -- I am disinclined -- I  
12 am going to reserve ruling for now. I am disinclined to  
13 permit motions under 546(e) which will be much more time-  
14 consuming and factually intensive. I don't view those -- I  
15 don't view the 546(e) issue as appropriate for early  
16 decision by the Court.

17                   Certainly those who wish to reserve on that issue  
18 -- maybe the issue is going to be reserved, I'm not deciding  
19 it. But this is not the first case in which I have faced  
20 546(e) issues. Yes, it's the first crypto case. I think  
21 these are uncharted waters. So I will -- you know, I've  
22 considered the arguments. I'm not ready to rule on it now.  
23 I'll just say I am disinclined to do that.

24                   This is really a phase -- phasing of the case  
25 issue. I agree that there are pure legal issues that will

1 help determine the direction of mandatory mediation. It  
2 doesn't prevent the voluntary mediation now. I don't put  
3 546(e) into that category. I don't plan to wait six, nine,  
4 or 12 months to kick mandatory mediation in place while the  
5 546(e) issue gets resolved by the Court. So those are my  
6 inclinations. I am not ready to rule at the moment on it.

7 Any last points you want to make, Mr. Vaughan?

8 MR. VAUGHAN: Not on that point, Your Honor. If  
9 you would like me to raise issues about the fees --

10 THE COURT: Let me raise one issue. And I want to  
11 ask Mr. Hershey about this. I am concerned, Mr. Hershey,  
12 that because of communications issues -- let me just leave  
13 it for that -- there are some number of defendants -- and  
14 I've read the objections -- that they never even knew that  
15 there was a deadline. My inclination is, particularly since  
16 we are deferring a start date for mandatory mediation, is to  
17 see if you can get agreement on a date by which people will  
18 have an opportunity to respond on voluntary settlement.

19 MR. HERSHHEY: Absolutely, Your Honor. And I'll  
20 just note that we've heard the same thing from defendants,  
21 that they weren't even aware that we were settling at  
22 transaction date values. And we've had many settlements  
23 since we filed the complaints. Because once people got  
24 sued, they realized that this was real and -- you know, and  
25 the communication reached them.

1           I think, you know, we're still doing those  
2   settlements. For anyone listening, we're happy to  
3   communicate regarding settlement always. I think people  
4   know that. And we've been having a lot of those  
5   discussions. But yes, Your Honor. Absolutely we will keep

6   --

7           THE COURT: Mr. Hershey, what I would like though  
8   is -- so there isn't any ambiguity about it, it doesn't  
9   depend on the whim of any party or not, is an order on the  
10   docket that has a date certain that gives -- give people a  
11   reasonable time if they can reach out to you. I mean, you  
12   can voluntarily agree to extend it, but there is a date  
13   certain. You know, I am sufficiently concerned. There were  
14   enough people who didn't get notice of it, and they are  
15   entitled to an opportunity to consider. And if possible I  
16   think it's to your advantage as well to see if any  
17   settlements can be reached.

18           MR. HERSHLEY: Absolutely, Your Honor. We will do  
19   that.

20           THE COURT: All right. So confer with counsel.  
21   See if you can agree on a date. If you can't, submit an  
22   order and I'll -- anybody else can submit a proposed order  
23   and I'll just resolve it without another hearing. I just --  
24   I want a sufficient amount of time that people will have to  
25   respond to it. Okay?

1                   Before I call on people who have spoken already, I  
2 see Mr. Ankeney. I am probably mispronouncing your name.  
3 Go ahead.

4                   MR. ANKENEY: Thank you, Your Honor. My name is  
5 John Ankeney. I am a pro se creditor and now a pro se  
6 defendant. I have filed three petitions with the Court pro  
7 se. I am obviously not a professional. But I am here for  
8 two reasons.

9                   Quickly to just respond to two things that Mr.  
10 Hershey mentioned. I'm also on the agenda today to speak.  
11 If the Court would prefer that I continue speaking for  
12 another couple of minutes briefly now, I certainly can. The  
13 two things that I would like to respond to after Mr. Hershey  
14 spoke are kind of an oblique reference to -- we only have a  
15 few areas of disagreement. I couldn't disagree with that  
16 any more fundamentally. There is a complete fork in the  
17 road with how Mr. Hershey et al would like to proceed and  
18 how others represented here by Ms. Kovsky and Mr. Besikof  
19 and myself as a pro se defendant would like to proceed. And  
20 we are petitioning the court overall writ large and asking  
21 you politely and with respect to say, hey, we realize that  
22 there is heavy lifting that has to be done. We realize that  
23 there are large issues that may take some time. But it's  
24 out of order and incorrect to put the cart before the horse  
25 as we've used this phrase multiple times. I think it's

1 correct.

2 At its face, there are issues that need to be  
3 solved. And we haven't solved them. And secondly, this  
4 blends quickly into the second point. For Mr. Hershey et al  
5 to mention that many have settled, this is not a badge of  
6 honor. We should not be proud about this. So I would like  
7 to take this moment to say who we are. We are people that  
8 took our own money, our own retirement money and put it into  
9 Celsius. I used referral codes from my parents who are in  
10 their seventies. Friends and coworkers. I told them about  
11 Celsius and I believed in this. It wasn't a get-rich-quick  
12 scheme for me; it was somewhere to hold my cash and to feel  
13 like maybe I could take all of this money and have it  
14 appreciate over time and maybe catch up with inflation for a  
15 small amount each year.

16 And so when we take this dollar that I had with  
17 Celsius and start off by saying, Mr. Ankeney, you're only  
18 going to get 33 cents back and you should be grateful for  
19 the 33 cents. And then you take the next 33 cents and you  
20 say, but we're going to give it to you in ionic shares. And  
21 we just heard earlier that the ionic shares will probably  
22 not pay off. I think that's polite and an understatement.  
23 I would say that from a business perspective it's been  
24 nothing short of a total failure.

25 And so to begin this whole process with 33 cents

1 on the dollar for my entire net worth -- I can tell you  
2 where I was when I got the phone call about Celsius. I can  
3 tell you that every night since then and every morning since  
4 -- that's not hyperbole. Every night and every morning  
5 since then I think about Celsius and the mistake that I  
6 made.

7 Now I have on top of this 33 cents left the  
8 plaintiff coming after me for transactions that were made  
9 under ordinary courses of business. And so my belief is  
10 fundamental that there is 0.00 dollars in repayments that  
11 should be given back. And so when we say in paper and here  
12 in speech that however many of the 2,500 have settled, you  
13 shouldn't get a gold star for that. These are people who  
14 settled because they were intimidated and they were afraid.  
15 And because Mr. Hershey had all used tactics and still use  
16 tactics that are intimidating and fearmongering and so  
17 people say, oh my gosh, I'd better do this. And that's not  
18 okay. And so I'm asking you -- I am petitioning to the  
19 court to say, hey, now is the time to do the heavy lifting  
20 and decide these *prima facie* issues that must be decided  
21 before we go on to say how much does every person owe and  
22 how quickly can we get them to pay back. Thank you, Your  
23 Honor.

24 THE COURT: Thank you, Mr. Ankeney.

25 No one is forcing anyone to settle. Let me make

1 that clear. People make their own decisions whether to  
2 settle or litigate. I decide the legal issues that are  
3 presented to me. I think what's been recognized today is  
4 there are common legal issues that arise in many or most of  
5 the adversary proceedings, the avoidance adversary  
6 proceedings. And I think most of the people on the screen  
7 are largely in agreement on many of those issues. There are  
8 obviously disagreements about whether something is a phase  
9 one, phase two, or wherever. And the Court will have to  
10 resolve that.

11 Ms. Kovsky, go ahead.

12 MS. KOVSKY: Thank you, Your Honor. I just wanted  
13 to respond to a couple of things and to clarify the record.  
14 I had tried to jump in but was not quick enough off the draw  
15 when you asked Mr. Hershey since it sounds like you and Ms.  
16 Kovsky are largely in agreement that there are common issues  
17 that need to be decided before mandatory mediation. I just  
18 wanted to clarify that we had not taken a position on that  
19 issue, nor were we pushing to have common issues litigated  
20 prior to mandatory mediation. And the fact is my group is  
21 most likely going to participate in voluntary mediation, as  
22 Your Honor suggested, sooner the better, and see if we can  
23 get some of the underbrush cleared out. Those that want an  
24 offramp, let's get them the offramp when they want it.

25 So I just wanted to clarify, we had not taken a

1 position on that. And it was not something that to my  
2 knowledge had really been contemplated. We had the  
3 mediation procedures order, which as I mentioned we  
4 negotiated, we -- the Plaintiff's counsel was very  
5 cooperative with us. And we have an agreed order that was  
6 submitted as a redline to their reply. Which doesn't  
7 contemplate having the common issues determined in the  
8 middle. I am not saying one way or the other whether we  
9 would be in favor of that. It's just not something that we  
10 had discussed or that we took a position on.

11 THE COURT: I think the only point I would make  
12 here is that there are lots of defendants who want those  
13 common issues resolved before they have to get to mandatory  
14 mediation. And it's perfectly rational for you and your  
15 clients to decide let's sit down, let's get a mediation  
16 going sooner rather than later before everybody runs up a  
17 lot of costs, let's see whether we can get a resolution.

18 MS. KOVSKY: Absolutely.

19 THE COURT: You know from your experience most  
20 cases settle. Not all of them.

21 MS. KOVSKY: I do know that from experience.

22 THE COURT: Most cases.

23 MS. KOVSKY: Your Honor also indicated that the  
24 parties agree on phase one. I am not sure exactly what Your  
25 Honor was referring to with respect to what would go into

1 phase one. I think there's large agreement at least between  
2 my clients and the plaintiff as to what the common issues  
3 are that should get decided before we get into the minutiae  
4 of individual defendant facts and circumstances. But there  
5 is vehement disagreement as I indicated earlier as to what  
6 should go into that phase one issue. Your Honor also  
7 indicated that there are some issues that can be decided  
8 purely as a matter of law. Even those issues that the  
9 plaintiff indicated in their statement could be decided as a  
10 matter of law. We believe that there could potentially --  
11 actually most likely there would be discovery, possibly  
12 experts. Under 550(a) one of the arguments that we would be  
13 raising if we get to a damages phase -- and hopefully we  
14 never get there. But if we do get to a damages phase,  
15 550(a) talks about benefit to the estate. And there's  
16 plenty of caselaw out there as to whether in a liquidating  
17 debtor scenario the debtor can collect from preference  
18 defendants more than is necessary to pay creditors in full.  
19 What creditors have actually received and the value of what  
20 they have received is not entirely straightforward when  
21 distributions have been made over a broad period of time in  
22 liquid crypto that has fluctuated in value. A portion of  
23 the distributions made in ionic stock, which I think as Your  
24 Honor heard today, the value of that stock is very much in  
25 question. So those issues would require discovery and most

1 likely experts.

2                   What the plan provides for may hinge in part on  
3 what disclosures were made, who they were made to, what  
4 people relied on, what they voted on, perhaps parole  
5 evidence.

6                   If Your Honor does determine that this is  
7 something that should be heard perhaps alongside the  
8 liability issues, we want to -- we absolutely do not want to  
9 be foreclosed from taking discovery to the extent that it's  
10 necessary. And I just wanted to put that on the record. I  
11 know there's not a motion in front of Your Honor right now  
12 for a -- this is not our 26(f) conference or 16(a)  
13 conference. But I just wanted to make sure that the record  
14 was clear that these are not things that we are in agreement  
15 on yet.

16                  Then there were just some logistical issues I  
17 wanted to flag. One of them was actually the creation of a  
18 consolidated docket, which Your Honor already covered, which  
19 we are very much in favor of. And we had proposed that to  
20 Mr. Hershey. And you'll see in the revised mediation  
21 procedures order there are references to a consolidated  
22 docket. So we believe that is absolutely necessary.

23                  We've also suggested to plaintiff's counsel that  
24 it might make sense and that we would certainly be willing  
25 to agree to the consolidation of all of the Troutman

1 defendants and perhaps even the Troutman defendants and the  
2 Lowenstein defendants together for pretrial purposes so that  
3 we don't have to file the same motions in 500 adversary  
4 proceedings plus the consolidated docket, and plaintiff  
5 doesn't have to, either. I think it saves a lot of time and  
6 energy and effort.

7 But there are also some questions that would need  
8 to be ironed out in terms of how do we get these issues  
9 before the Court. Who is bringing them, in what format, are  
10 we talking -- you know, are there going to be test cases,  
11 will there be consolidation? We think that it's very  
12 important to have the rules of the road ironed out in a  
13 formal manner before we get going on this so that we're not  
14 trying to build the airplane while we're flying it.

15 We've had some early productive discussions with  
16 Mr. Hershey and with the ASK team. But we believe that  
17 there needs to be something much more granular put in place  
18 so that this can be successful and efficient moving forward.

19 THE COURT: Thank you. Ms. Jaspan, I haven't  
20 heard from you so far. Go ahead if you wish to speak.

21 MS. JASPM: Good morning, Your Honor. Thank you.  
22 Michele Jaspan of Falcon Rappaport & Berkman for creditors  
23 Tom and Will McCann.

24 I'm only bringing up these issues, Your Honor,  
25 because it seems that we've somewhat gone into the area of

1 the motion for the streamlined procedures, and I just wanted  
2 to address a couple of things that had already been brought  
3 up.

4 To Your Honor's point about the mediation costs,  
5 we recognize and respect Your Honor's position on sharing  
6 costs. We're just going to ask that the parties consider  
7 and Your Honor consider perhaps what we had put in our  
8 opposition, a suggested perhaps sliding scale for defendants  
9 who simply cannot afford the cost of mediation, nor at this  
10 point every perhaps even the ability to settle. You know,  
11 as many of the individual pro se defendants have stated  
12 today, they've taken their retirement funds and college  
13 tuition funds or down payments that they expected to use  
14 from homes and parked it in Celsius. And now they don't  
15 have that money available. Or just funds that they had took  
16 out of Celsius and put back into their retirement accounts.

17 So we would just ask that that be considered for  
18 people who cannot afford it if they can prove this, that  
19 they be permitted to share on a sliding scale basis rather  
20 than this set fee basis.

21 And then the other point I wanted to bring up was  
22 about the issue of Your Honor saying that they should  
23 provide a date certain by when people who didn't receive the  
24 letters or did receive the letters but thought they were  
25 spam and didn't open them, which I've heard from many of our

1 clients, is not that it's a date certain, perhaps --  
2 everybody has got to respond by November 1st -- but that it  
3 be a date for a specific time after Your Honor makes his  
4 rulings on the issues that will come up --

5 THE COURT: It isn't going to work that way.

6 Okay? It isn't going to work that way. You're not going to  
7 sit back and wait six months for me to issue a ruling on  
8 whatever those issues are. I understood the complaint to be  
9 because of spam issues or otherwise there were many  
10 defendants who didn't receive notices and I want to solve  
11 that problem. I'm not giving people a free ride to wait for  
12 six or nine months to decide they do or -- you know, what  
13 their position is going to be. That's not going to happen.

14 I'm sensitive to the issue of costs. The only  
15 thing I can say is the costs of the mediation pale in  
16 comparison to what the costs of going ahead and litigating  
17 these cases will be. That's just the reality of it.

18 Mr. Vaughan, I've heard from you once, but your  
19 hand is still raised. Do you have some other point you want  
20 to raise?

21 MR. VAUGHAN: Yes, Your Honor. Do you want us  
22 just to address the issue of fees for mediation now since  
23 it's come up a few times?

24 THE COURT: Sure, go ahead.

25 MR. VAUGHAN: Okay. So yes, as Your Honor has

1 recognized, the proposed mediation fee schedule -- and  
2 actually I'll pause here and give Plaintiff's counsel an  
3 opportunity to clarify. In their reply to our objections,  
4 they listed out that the minimum -- or that the mediation  
5 fee for individuals under \$500,000 starts at \$1,000 per  
6 party. That's inconsistent with what they have filed in  
7 their motion, which was a minimum of \$2,500 per party. I  
8 guess we would just like to start before I get into the rest  
9 of my arguments as to which is accurate.

10 THE COURT: No, go ahead and put everything --  
11 let's get everything you have to say on the record.

12 MR. VAUGHAN: Okay. Yes, Your Honor.

13 THE COURT: And then I'll ask (indiscernible) to  
14 respond.

15 MR. VAUGHAN: Well, assuming that it does follow  
16 their original mediation fee schedule, then the minimum fee  
17 for defendants under \$500,000 would be at least \$2,500 and  
18 up to \$3,250. And based on the 17 mediators that are  
19 currently scheduled, that would mean that each mediator  
20 would hear the same case 140 times, taking into  
21 consideration groups and everything, probably a few times  
22 less than that. But roughly 140 times, which is a payment  
23 of \$700,000 for each mediator to hear that case  
24 repetitively. And that number will be reduced by a factor  
25 of whatever number of mediators Your Honor decides which

1 should remain on the list after they pare it down.

2 So they are astronomically too high, substantially  
3 higher than any of the cases listed by Plaintiff in their  
4 motion for streamlined procedures. And it's also asking  
5 individuals on the lower end of the WPE scale, which  
6 plaintiff recognizes constitutes the vast majority of  
7 claimants -- or defendants in this matter to pay between 1  
8 to 2.5 percent of their original WPE value and which will  
9 simply not (indiscernible) at the figures that plaintiff has  
10 been seeking unsuccessfully for roughly 70 percent of  
11 individuals in this case.

12 And on the same point, Your Honor, in their reply  
13 to our objections, Plaintiff's counsel noted that the  
14 mediation fee schedule is based on the complaint WPE value  
15 rather than the original WPE value that began being  
16 circulated in March -- I'm sorry, in January and then March  
17 and then into April, which is simply illogical, Your Honor.  
18 The individuals with -- one individual has given me  
19 permission to share a story on this point, and it may put  
20 this into context for why it doesn't make any sense.

21 His name is Michael Wakefield. Mr. Wakefield was  
22 one of the few individuals who was actually speaking with  
23 agents of the plaintiff to attempt to settle his claims  
24 prior to the filing, but they were unable to reach a  
25 resolution. And at that point in time, Mr. Wakefield's

1 settlement value for WPE was \$102,000. When this suit was  
2 filed against him, Plaintiff alleged that his WPE was over  
3 \$1.9 million.

4 And now Mr. Wakefield and individuals like him who  
5 participated in the loan program under the plaintiff's  
6 current proposal are expected to pay mediation fees  
7 commensurate with that new figure of liability when they're  
8 not even able to reach an agreement or fail to even become  
9 aware of an agreement with regard to the original measure of  
10 his WPE.

11 And, Your Honor, the reason we are going this  
12 process is to encourage individuals to mediate. There is  
13 simply no reason to judge the mediation fee schedule based  
14 on people's complaint WPE when all that does is serve to  
15 raise the mediation fees and reduce the chances of  
16 settlement.

17 THE COURT: Thank you, Mr. Vaughan. All right.  
18 Has anybody who has not been heard so far wish to be heard  
19 by the Court?

20 Mr. Hershey?

21 MR. HERSHHEY: Thank you, Your Honor. I will be  
22 brief because it sounds like we will submit a further round  
23 of briefing to Your Honor on these issues, and I don't want  
24 to repeat what Your Honor will read shortly.

25 I do want to clear something up real quick, which

1 is that I think there have been some references during this  
2 discussion to the plan administrator. That's a different  
3 entity from the litigation administrator, which is my  
4 client, which is handling litigation. I just want to make  
5 that clear to all parties.

6 I also want to briefly address the cost of  
7 mediation that Mr. Vaughan just addressed. I have two  
8 points. The first is that Mr. Vaughan on behalf of the  
9 Bressler group in his objection listed out on Page 6 a few  
10 examples of previous cases where there was mandatory  
11 mediation and parties were required to split the fees.

12 And what we have suggested is completely in line  
13 with that precedent. So, for example, in Advance Watch,  
14 which is one of Your Honor's cases, parties where there was  
15 less than \$250,000 at stake were required to pay \$2,000 for  
16 mediation. Our number is \$2,500. So we're just \$500 above  
17 what happened in Advance Watch. And Advance Watch was seven  
18 years ago. So I think there's a reason that we've gone up  
19 slightly.

20 And by the way, just for the record, Mr. Vaughan  
21 is correct, there was an error in our reply. We regret  
22 that. The numbers that are accurate are the ones in the  
23 motion -- the procedures motion that we filed.

24 In Sears it's the same thing. Sears. Again, this  
25 is now I believe -- yeah, it's six years ago. And parties

1 between \$100,000 and \$250,000 were, again, 2,000 per side.

2 We are at 2,500.

3 So particularly with regard to the smaller  
4 defendants who have more of an ability or right to claim  
5 difficulty in paying these fees, we are completely in line  
6 with precedent.

7 I also think that Mr. Vaughan's comments really go  
8 the point of why the issues that we believe should be phase  
9 one issues, which are the amount of damages that Plaintiffs  
10 potentially could be required to pay is relevant. Because  
11 as Mr. Vaughan says, these parties dispute the damages that  
12 we're asserting. They think that they should be in lower  
13 brackets with regard to mediation fees. Let's figure that  
14 out.

15 And to be clear, we're not looking to get a final  
16 order on the amount of damages. But there are certain  
17 issues that go to what that amount of damages can be.  
18 Whether we can request return of the assets themselves under  
19 Section 550, how to calculate new value under Section 547.

20 Just to be clear, you know, everyone who mediates  
21 does so before liability is determined. That's the  
22 definition of mediation, right? This is all going to happen  
23 before liability is determined. And everyone who mediates  
24 does so with an eye on the amount of damages. I guarantee  
25 you every defendant in whatever submission they make to the

1 mediator before mediation begins is going to say it's  
2 ridiculous the amount the litigation administrator is  
3 seeking here. They have no right to this under the law.  
4 And they're going to make these arguments, and we're going  
5 to do the opposite.

6 And just to be clear, I want the mediation to  
7 succeed. If I'm wrong, I don't want to be wrong one minute  
8 longer than I absolutely need to be. So if Your Honor tells  
9 me that we are not entitled to return of the assets,  
10 obviously that's not the result that we want. But it will  
11 help us have a more effective mediation. Because we'll go  
12 in there knowing what our damages actually can be, not with  
13 some unrealistic notion of what they can be. And there will  
14 be more settlements.

15 And Ms. Kovsky said -- I believe it was Ms.  
16 Kovsky, and if I am misattributing this, I apologize. But  
17 one of -- there were many counsel who spoke. And one of  
18 them said that they don't believe that litigating these issues  
19 in phase one will result in more settlements. That just  
20 can't be the case. I know personally it can't be the case.  
21 Because parties reach out to me and they say we will settle  
22 for this amount. And I say I'm sorry, our client simply  
23 can't accept that. And we can bridge that divide if some of  
24 these threshold legal issues can be decided in phase one.

25 So again, I don't want to overdo it because we'll

1 brief these issues for Your Honor in the final round that  
2 Your Honor mentioned. But that is our position. And we  
3 believe it would be beneficial to defendants and us. It's  
4 not just a one-way benefit as defendants argued. I think if  
5 we end up being wrong, of course then that's to their  
6 benefit. I think a settlement at a lower number is of  
7 course more likely at that point.

8 THE COURT: Let me raise one issue.

9 MR. HERSHY: Of course, Your Honor.

10 THE COURT: You've provided information on so-  
11 called precedent cases. None of them involve 2,463  
12 preference avoidance actions. Advance Watch was my case.  
13 It was 35 cases that were being mediated.

14 One of the reasons I frankly think there's an  
15 advantage not to have 17 prospective mediators on the list -  
16 - but I'm not going to use a number because I don't want to  
17 -- I'm not ready to say what the number should be. But  
18 whether it's 10 or 15 or five, it just -- the -- that person  
19 who is the mediator has gone through the learning curve. So  
20 it seems to me that the mediation price for each case should  
21 be less because the mediator is not going to have to tread  
22 new ground with respect to each of these. And it's one of  
23 the reasons that I'm -- I think, yes, I appreciate the fact  
24 that you pulled together a group of precedent cases, as  
25 you've referred to them as. But I think Sears, which was --

1 or Quebecor, which was 350 cases, it's not 2,463 cases.

2 Yes, the people who are on the mediator list need  
3 to be broadly respected so that both the plaintiff and the  
4 defendants trust the person to be fair about it. But I  
5 think that there is -- there are clear cost savings to be  
6 encountered when the list of mediators, of broadly respected  
7 people is kept much shorter because they are assured of a  
8 much larger number of mediations that they're going to do.  
9 So that's one observation I would make.

10 With respect to this issue of what would the  
11 Plaintiff be entitled to recover, to the extent you want to  
12 hone in on your last round of briefs on why that's an issue  
13 of law to be determined, I'm open to considering that. I'm  
14 not trying to exclude issues. I don't want to include  
15 issues that ultimately are going to be factually intensive  
16 that people are going to say, oh, we can't -- you know,  
17 unless we've had full discovery, we can't go ahead and  
18 resolve those. All right.

19 Anything else you want to say at this point, Mr.  
20 Hershey?

21 MR. HERSHLEY: Yes, Your Honor. The only last  
22 thing is -- and we can do this after other parties speak.  
23 But I just wanted to discuss what the date for the  
24 submission would be. I have a suggestion, but of course --

25 THE COURT: Go ahead and give it to me.

1 MR. HERSHY: Sure. So the next hearing, Your  
2 Honor, is September 12th. I would -- and I think these are  
3 issues that have been discussed extensively, including  
4 today. I think parties know what they want to say. So I  
5 would suggest that by September 5th, which is nine days from  
6 today and a week before the hearing, we file our subsequent  
7 submission regarding any areas of disagreement that remain.  
8 And I would propose to file with that -- Ms. Kovsky has  
9 observed several times the procedures order doesn't make  
10 sense in light of these common issues. We have to make them  
11 fit together. And we recognize that.

12                   We would -- the litigation administrator file a  
13                   revised procedures order that takes into account how we are  
14                   proposing to handle these common issues. And parties who  
15                   disagree I would suggest could express their disagreement  
16                   with our proposed procedures as well.

17 THE COURT: What's the -- is there a hearing after  
18 September 12th? What's the next hearing after that?

19 My only concern is getting anything done before  
20 Labor Day. People are on vacations and I don't want to be  
21 unreasonable about when people have to file their responses.

22 MR. HERSHY: Fair point, Your Honor. October 8th  
23 is the next one, which is not too far away.

24 THE COURT: I would be more comfortable working  
25 with that as the hearing date and backing into a date.

1                   MR. HERSHY: That works for us, Your Honor. And  
2 again we'll do the briefing however Your Honor would like.  
3 I don't anticipate this being an opening brief response  
4 reply sort of thing. I think it would just be a submission  
5 which we could make on October 1st along with other parties  
6 who may not agree with our position. But of course I defer  
7 to what Your Honor thinks is best.

8                   MS. KOVSKY: Your Honor, could I be heard on that?

9                   THE COURT: Go ahead. Go ahead, Ms. Kovsky?

10                  MS. KOVSKY: Thank you. It's a procedural issue.  
11 This has come up in a very informal manner. At the July  
12 29th status conference, Your Honor indicated to me and to  
13 Mr. Hershey and to Mr. Besikof that you wanted us to work  
14 together to try to identify common issues and suggest an  
15 efficient path forward.

16                  We're now talking about what seems almost like a  
17 broad and generally applicable pretrial conference and  
18 scheduling order for litigation that will affect everybody.  
19 But this hasn't been put out on notice to anyone yet. It's  
20 really been very informal. And I am just concerned that we  
21 could agree -- I mean, Mr. Hershey and I can certainly sit  
22 down in a room and figure out what we think makes sense and  
23 come up with something. But hearing some of the comments  
24 from counsel for other groups and pro se defendants, I am  
25 concerned that without notice, that they will object to

1 being bound by something that they didn't even know was  
2 going to be happening.

3 THE COURT: Well, they're going to know very soon  
4 what they're going to be bound by.

5 MR. HERSHHEY: And let me just say we of course  
6 will be happy to put out a notice to all creditors of these  
7 deadlines.

8 MS. KOVSKY: We would also appreciate some  
9 guidance from the Court as to what kind of format -- since  
10 there is no motion pending here, what would the Court like  
11 from the parties in terms of responsive pleadings?

12 THE COURT: I'm looking at dates. Hold on.

13 Mr. Hershey, file a motion with the specific  
14 relief you're requesting by 5:00 p.m. September 7th.

15 MR. HERSHHEY: Absolutely, Your Honor.

16 THE COURT: Oppositions to the motion by 5 p.m.,  
17 September 21st, reply by 5:00 p.m., October 1st. Hearing --  
18 what time is our hearing on October 8th, 10:00 a.m.?

19 MR. HERSHHEY: 10:00 a.m., yes, Your Honor.

20 THE COURT: Schedule the hearing for 10:00 a.m. on  
21 October 8th, so there'll be no question. There'll be a  
22 motion pending before me. To the extent you can include  
23 within your motion those areas as to which those agreements  
24 so indicate as to where there -- where you're seeking other  
25 relief as to which there is no agreement, so indicate

1 clearly, but this way, there will be a motion. There will  
2 be an objection deadline, a reply deadline, and a hearing.

3 I think one -- the few things I think there's  
4 agreement on today is to create something called -- I'm  
5 using this name. If you've got a better name, use it,  
6 Celsius preference action docket. I've done this before.  
7 It's just too hard to find things on the main docket, even  
8 for me. This will -- may be tough enough as it is.

9 Reach out to my law clerks, and we'll get that  
10 open. All the motion and any opposition in reply will only  
11 need to be filed in this newly created docket, because  
12 everybody will know exactly where to look, where to file  
13 your opposition. It's not specific -- it's not case  
14 specific or within all of the cases within the docket.

15 Okay?

16 MR. HERSHY: Thank you, Your Honor. We'll do  
17 that absolutely.

18 THE COURT: And if you have questions -- issues  
19 for fine tuning, reach out to my law clerks to deal with  
20 that. Okay?

21 Ms. Kass, your hand I still raised. Before I call  
22 on Mr. Stein, is -- any last points you wish to raise?

23 MS. KASS-GERGI: Just a very last point. As I had  
24 indicated before, Your Honor, there are a number of clients  
25 that have reached out to Troutman for representation, non-

1 US. They have not been served yet, so they are not actually  
2 -- they've not been brought into the litigation yet, and I  
3 just wanted to make sure that that's on the Court's radar,  
4 as well as on Mr. Hershey's radar, that the timing and the  
5 procedures and whatever we are going to be hopefully  
6 negotiating consensually, we'll have to take into account  
7 that there's going to be a whole tranche of defendants, half  
8 the defendants, that are going to be on an entirely  
9 different timetable.

10 THE COURT: Possible, okay.

11 Mr. Stein?

12 MR. STEIN: Thank you, Your Honor. I'm appearing  
13 as a pro se defendant. I appreciate the opportunity to  
14 address the Court today. Like many others, I did not  
15 receive a settlement email, and likely went into spam --

16 THE COURT: We're fixing that problem.

17 MR. STEIN: I understand, yes.

18 THE COURT: There may be things we can't fix, but  
19 that problem, I think, we're fixing.

20 MR. STEIN: Fair enough. I guess I'll just jump  
21 to the point in the spirit of efficiency. While I disagree  
22 with the tactics in terms of intimidation and strongarm to  
23 approach a settlement on behalf of Mr. Hershey's firm, there  
24 is something to be said for price for peace, and there's a  
25 legal component to this. My clarification question is, is

1 there terms by which settlements are negotiable? I'm not  
2 sure if that's a question for you --

3 THE COURT: That isn't a question for me. I can't  
4 answer that question. I think -- reach out to Mr. Hershey.  
5 Get a dialogue going. You'll -- you ought to be able to  
6 figure it out. For 34 years I've practiced law, probably  
7 more often representing defendants than plaintiffs, but  
8 representing both. And they're often -- no matter how  
9 strongly you feel about your position as a plaintiff or  
10 defendant, there usually is a price for peace and the  
11 certainty of getting something behind you. That's just the  
12 nature of it. I can't (indiscernible) --

13 MR. STEIN: Understood.

14 THE COURT: Okay.

15 MR. STEIN: Thank you.

16 THE COURT: All right, anybody who hasn't been  
17 heard from so far wish to be heard?

18 All right, just one last time, just to make sure  
19 that you're all on the same page on this, motion to be filed  
20 by 5 p.m., September 7th. Opposition 5 p.m. September 21st,  
21 reply 5 p.m. October 1st.

22 MR. STEIN: Thanks, Your Honor. And Your Honor,  
23 if I may ask one more thing before we move on. Given that  
24 there's no procedures order in place yet, there have been a  
25 number of litigations filed. Could your Honor just confirm

1 on the record that all litigation is stayed until these  
2 issues are decided?

3 THE COURT: All litigation is stayed until there  
4 issues are resolved. I know there have been some specific  
5 requests for extensions of time. Everything is on hold.  
6 Okay? No one has to be concerned that, I got served, my  
7 answer is due by such and such date, if I don't, I risk  
8 having a default taken. On the record, I'm so ordering the  
9 transcript, that all response dates are stayed until the  
10 procedure's order is put in place.

11 MR. STEIN: Thank you, Your Honor.

12 THE COURT: Okay, all right, what do we still have  
13 to do?

14 MR. COLODNY: Your Honor, Aaron Colodny on behalf  
15 of the litigation administrator and White & Case. Next, we  
16 have the status conferences or pretrial conferences in the  
17 adversary proceedings against the former executives,  
18 employees, and then, I believe there's one with respect to  
19 Priority Power Management.

20 THE COURT: Right. Let's deal with Priority Power  
21 Management next, okay?

22 MR. COLODNY: Great, that will be my co-counsel  
23 (indiscernible) Koepp.

24 THE COURT: Go ahead.

25 I'm sorry, who's taking the lead on that, Mr.

1 Colodny?

2 MR. COLODNY: I believe it's Ross Hooper,  
3 (indiscernible).

4 MR. HOOPER: Good morning, Your Honor. It's Ross  
5 Hooper from Seward & Kissel.

6 THE COURT: Go ahead, Mr. Hooper.

7 MR. HOOPER: My colleagues, Mr. Ashmead and Paul  
8 Koepp, are also on the line. We represent Barber Lake  
9 Development, LLC. Counsel for Priority Power Management,  
10 Baker Botts, is also on the line, Mr. Layrisson, and, I  
11 believe, one of his associates as well.

12 MR. LAYRISSON: Good morning, Your Honor. Louis  
13 Layrisson, joined by my colleagues, Scott Bowling and Nisch  
14 Bhan, on behalf of Defendant Priority Power.

15 THE COURT: Okay.

16 MR. HOOPER: So good morning, Your Honor. This is  
17 the first time we have been before you on this case. I  
18 don't know if you would like kind of a quick summary of what  
19 this case is and how the parties think this will play out,  
20 if that will be helpful for the Court.

21 THE COURT: It would be. Go ahead.

22 MR. HOOPER: Okay, thank you, Your Honor. So the  
23 plaintiff, Barber Lake Development, LLC, is an entity that  
24 received the letter of intent that was signed between  
25 Celsius Mining, LLC and Priority Power Management, pursuant

1 to one of the master conveyance agreements back in January,  
2 which I believe was approved by this Court.

3 The case itself involves three separate categories  
4 of claims. The first is with respect to the letter of  
5 credit itself. It was a mix of binding and non-binding  
6 terms pursuant to which Priority Power Management had agreed  
7 to develop a site in Mitchell County, Texas, referred to as  
8 the Barber Lake site for Celsius Mining. That was signed  
9 back in February of 2022.

10 Unlike many of the agreements between Priority  
11 Power Management and Celsius Mining, this particular  
12 contract provided that certain amounts paid by Celsius  
13 Mining were refundable until the later of the expiration of  
14 an exclusivity period or the date on which certain  
15 deliverables were provided by Priority Power Management to  
16 Celsius Mining.

17 What happened in this case is that those  
18 deliverables were never delivered, and it is Celsius  
19 Mining's position that the fees that were paid are  
20 refundable in accordance with the terms of the contract.  
21 There were certain fees under the terms of the contract that  
22 PPM could deduct from the \$17 million that was paid, but we  
23 believe it's a pretty straightforward case in which those  
24 deliverables clearly were never delivered. And PPM has  
25 refused to give the money back.

1                   PPM in response has said that among other things  
2                   that the then-CEO of Celsius Mining back in -- on March  
3                   31st, 2022 -- wait, it's April 1st, took -- effectively  
4                   released any claims for the return of those monies. We  
5                   disagree with that position. We believe the contract itself  
6                   is clear. The communication from the CEO did not constitute  
7                   a release, but if it did constitute a release of a \$17  
8                   million claim 100 days before this bankruptcy was filed, it  
9                   was done at a time that Celsius Mining was insolvent, so  
10                  there is a claim to avoid that purported release.

11                  The last category of claims is there -- we have  
12                  pled that there were amounts paid by Celsius Mining outside  
13                  of the contracts, so separate from this letter of intent,  
14                  which we all agree was the only contract with respect to  
15                  this particular property. Celsius Mining made payments.  
16                  Those payments were used by PPM to develop the property, and  
17                  Celsius Mining is -- for the purpose of selling the  
18                  property, and that Celsius Mining is entitled to the benefit  
19                  of those extra contractual payments to the extent that there  
20                  was an equitable interest in the property that was created  
21                  by those.

22                  So those are the three categories of claims.  
23                  Priority Power Management has moved to dismiss that third  
24                  category. That motion is already on file. Our opposition  
25                  and Barber Lake will be filing that opposition on September

1 11th. That will be for a -- teed up for a hearing before  
2 Your Honor on September 18th at two o'clock.

3 We have been in discussions with Priority Power  
4 Management. We all agree that this case should move  
5 forward, notwithstanding that partial motion to dismiss, and  
6 we came together and did propose a joint schedule to Your  
7 Honor, which we sent to chambers on Friday. That in sum  
8 would be a five-month period for fact discovery. It would  
9 take us to the end of January, 2025 with two months for  
10 expert discovery, but there would be no stay pending any  
11 decision on the motion to dismiss. The only thing that we  
12 would tie to the motion to dismiss would be the time in  
13 which any amended pleading could be filed by Barber Lake.

14 THE COURT: I mean, I -- and I did have -- I do  
15 have the schedule, and I did review the complaint. The --  
16 while you largely followed the template that I used for case  
17 management and scheduling orders, you would not have seen,  
18 because I -- what I used, the template that I used for what  
19 I consider to be more complicated cases, and essentially,  
20 what it adds are a couple of paragraphs that really follow  
21 requirements of the federal rules of civil procedure that do  
22 apply in bankruptcy, but for most garden variety adversary  
23 proceedings, I don't impose.

24 So to give you an example, and I haven't put the  
25 date in for this, but on or before a date that would be

1       inserted, "Counsel for the parties shall file a written  
2       report outlining their discovery plan as required by Federal  
3       Rule of Civil Procedure 26(f)(2) and (3). Counsel Shall  
4       cooperate and endeavor to reach agreement on a single  
5       comprehensive discovery plan. If they are unable to agree  
6       on a single discovery plan, each counsel may submit its  
7       proposed plan by blank date."

8                   And then, the next paragraph, which is also added,  
9       is "The discovery plan shall include proposed deadlines for  
10      serving and responding to document requests, serving and  
11      responding to interrogatories and requests for admissions,  
12      identifying proposed fact witnesses, and providing the  
13      timeframes and deadlines for beginning and then completing  
14      deposition of fact witnesses, and for identifying expert  
15      witnesses, exchanging expert witness reports, and taking  
16      expert witness depositions. Unless otherwise ordered by the  
17      Court, all fact discovery shall complete it within" -- and  
18      you would pick the 210 days, I believe, and I'm -- that's  
19      fine -- "after the date of this order, and all expert  
20      discovery shall be completed within 60 days after the  
21      deadline for completion of fact discovery."

22                   So it seemed to me that, just based on review of  
23      what I've read, this is not the garden variety preference  
24      avoidance action that I just heard so much about, and I  
25      think it's -- I have found in the past it's helpful to

1 require the parties to sit and confer and try and agree on a  
2 discovery plan. That's already included in the federal  
3 rules. I just don't, for a garden variety adversary  
4 proceeding, I just haven't found it profitable to require  
5 it, but it does seem to me it's appropriate to include that  
6 requirement here.

7 But I don't know, Mr. Hooper, if you want to  
8 respond to that, I know there's other counsel with hand  
9 raised.

10 MR. HOOPER: Yes, Your Honor, thank you, Your  
11 Honor. I have -- I think that that probably does make sense  
12 here. This is in some ways more akin to a commercial  
13 dispute, kind of a standard contractual dispute. I will say  
14 there -- a lot of the witnesses here for Barber Lake are  
15 going to be former employees, so there may -- there may be  
16 some complications that we will want to work out with  
17 Priority Power Management. Our relationship has, thus far,  
18 has been good, and we were able to consensually work to a  
19 schedule, and I'm confident we can do that with a just  
20 discovery plan.

21 THE COURT: Yeah, it helps to get -- so you say  
22 they're former employees. It helps to get the names on the  
23 table so you're all understand -- here are the issues we've  
24 got to deal with. I, look, I litigated for 34 years before  
25 I became a judge, and those are the issues that come up in

1 every complicated civil case. And counsel working in good  
2 faith get the issues resolved, but it helps to get the  
3 issues on the table sooner rather than later.

4 MR. LAYRISSON: On behalf of Priority, Your Honor,  
5 completely agree and happy to work (indiscernible) --

6 THE COURT: You have to identify yourself for the  
7 record.

8 MR. LAYRISSON: Apologies, Your Honor. Louis  
9 Layrisson for Priority Power, and agree with everything  
10 that's been said and will be happy to work with Mr. Hooper  
11 on a discovery plan as ordered by the Court.

12 THE COURT: What I will do is I will have one of  
13 my law clerks -- I made changes on a draft. As I said, I  
14 left some dates out of it, how much time do you want to  
15 submit the discovery plan. I will have -- I'm not going to  
16 file it on -- when you get it filed on the docket, I will  
17 have one of my law clerks email you the draft, and you can  
18 fill in, you can talk about the details, and hopefully, it  
19 won't be necessary to have another hearing before I enter in  
20 a (indiscernible).

21 Okay, somebody has to mute their line.

22 Go ahead, Mr. Layrisson. I cut you off.

23 MR. LAYRISSON: No problem, Your Honor. That all  
24 sounds great to us, and just Mr. Hooper's summary was  
25 helpful, and I don't intend to go into much detail today. I

1 do want to clarify one thing about what Priority Power's  
2 position may be, that there was a release by executives.

3 We do disagree with that characterization. We  
4 think that Priority Power's position is that it did do the  
5 work to earn the fees that are in dispute, and that the  
6 Celsius executives simply acknowledged rights that the  
7 parties had under the contract, not that anything was  
8 released, that those fees that were voluntarily paid were in  
9 fact earned, too.

10 And Mr. Hooper did correctly point out we have a  
11 motion to dismiss on file that goes in much more detail  
12 about our vantage point of the case, Your Honor, but from  
13 our perspective, hearing that in September will hopefully  
14 allow us to trim this case to the core contract dispute, and  
15 we'll work with counsel, obviously, work through all of the  
16 discovery issues on that. Thank you.

17 THE COURT: I'm fine with the plans to do the  
18 motion to dismiss. I'm going to reserve, after I have the  
19 briefing, whether we go forward with the hearing on the date  
20 you selected or not. I don't let things linger, so if the  
21 date gets moved, it's just because my calendar just doesn't  
22 permit me to do it, to spend the time preparing for it. So  
23 you'll get -- it isn't going to get delayed for a long time.  
24 I just reserve perhaps changing that date. Okay?

25 MR. LAYRISSON: Understood, thank you, Your Honor.

1                   THE COURT: Okay, I will get one of my law clerks  
2 to send you -- it's clearly a draft, and you can tinker with  
3 it to a limited extent. It's a format that I've used often  
4 for more complicated adversary procedures. Okay, it just  
5 picks up from the Federal Rules of Civil Procedure, which  
6 don't always make sense for the simple garden variety  
7 adversary proceeding. Okay?

8                   MR. LAYRISSON: Thank you, Your Honor.

9                   MR. HOOPER: Thank you, Your Honor.

10                  THE COURT: Thanks very much. And I appreciate  
11 the two of your cooperating and working out the details on  
12 the schedule. Okay?

13                  MR. HOOPER: Of course, thank you.

14                  MR. COLODNY: Judge --

15                  THE COURT: So I guess, am I correct, the next  
16 thing on the agenda is the employee-related APs?

17                  MR. COLODNY: That's correct, Your Honor. Aaron  
18 Colodny on behalf of Mo Meghji as the litigation  
19 administrator.

20                  THE COURT: Go ahead.

21                  MR. COLODNY: So we filed six actions against  
22 former executives and employees between July 10th and 12th.  
23 The litigation administrator has also entered into tolling  
24 agreements with other former executives and employees and is  
25 attempting to resolve other claims consensually prior to

1 bringing more litigation. At the request of the Court, we  
2 filed a status report, which was filed in the main case at  
3 Docket Number 7632. And it was also filed in the Meghji v.  
4 Mashinsky et al adversary proceeding, which is adversary  
5 proceeding Number 24-03667, and the adversary proceeding  
6 concerning Mr. Yarwood, 24.03740. I'm happy to go through  
7 that status report with Your Honor now for the record.

8 THE COURT: Go ahead.

9 MR. COLODNY: So just to summarize, Your Honor, I  
10 think two big issues, the first is service. As you asked  
11 Mr. Hershey to summarize the service before, we served all  
12 US defendants in the Meghji v. Mashinsky et al adversary  
13 proceeding on July 25th through mail. We have, we believe,  
14 three defendants that are located in Israel, and we have  
15 sent the service packages to the Israeli central authority  
16 for service on those defendants.

17 We understand that because of the war in Israel  
18 that that may be delayed some time, but the process will  
19 work there. We also hand-delivered a package to the German  
20 central authority on August 5th with respect to one  
21 defendant who's believed to be in Germany, and that's Mr.  
22 Johannes Treutler. And so we believe that service has been  
23 completed or is in process with respect to all of the  
24 defendants in the Meghji v. Mashinsky adversary proceeding.

25 With respect to the requested stay, the Debtors,

1 the Committee at the time, and the US Attorney's Office for  
2 the Southern District of New York entered into a stipulation  
3 that stayed equitable subordination claims against the  
4 defendants, certain of the defendants in the Mashinsky -- or  
5 Meghji v. Mashinsky adversary proceeding in connection with  
6 confirmation of the plan. That stipulation was entered by  
7 the Court at Docket Number 3450.

8 Since then, the criminal case with respect to Mr.  
9 Mashinsky has been delayed from, I believe, it was  
10 originally September 17th, and now it's January 25th, 2025.  
11 And after we filed our complaint, the United States  
12 Attorney's Office reached out to us and inquired about  
13 extending that stay until the end of Mr. Mashinsky's  
14 criminal trial. The litigation administrator did not object  
15 to that request.

16 We reached out to counsel for all of defendants  
17 via email that we were aware of from the original Chapter 11  
18 docket, and those located in the United States, as listed in  
19 the status report, indicated they did not object. However,  
20 certain of those defendants did not wish to execute the  
21 stipulation.

22 We did not receive a response from counsel to Roni  
23 Cohen-Pavon, Daniel Leon, Aliza Landes, or Johannes Treutler  
24 or the entities associated with Daniel Leon. We filed a  
25 stipulation last night, which is executed by the litigation

1 administrator and the office for the US Attorney, which  
2 would extend the stay of the proceedings until the earlier  
3 of the end of Mr. Mashinsky's criminal trial for March 31st,  
4 2024. And we would ask that the Court enter that stay.

5 THE COURT: I assume you mean March '25.

6 MR. COLODNY: '25, that's correct, Your Honor.

7 Sorry for misspeaking.

8 THE COURT: Does anybody else wish to be heard?

9 I've had other cases in which defendants in civil  
10 actions were defendants in criminal cases, and the US  
11 Attorney has, as always, requested a stay. And I'm fine  
12 with it, so let me just ask you, Mr. Colodny, since not  
13 everybody has responded or appeared. I'll approve the  
14 stipulation. Do you want to file just a short-form motion,  
15 asking for the same relief as to any of the defendants  
16 who've not been served or accepted service?

17 I just want to be sure that there's no issue about  
18 -- it could extend their time to -- I don't know, however  
19 you want to deal with -- they just haven't responded, so I  
20 assume you're not going to move for default judgments within  
21 the period that you're agreed to a stay with the US  
22 Attorney.

23 MR. COLODNY: No, we don't intend to, Your Honor.  
24 And I can file a short-form motion for all defendants, and  
25 so we're all covered on all bases, (indiscernible) --

1                   THE COURT: Yeah, just file a short form with a  
2 very simple order, and I will grant it and do that.

3                   MR. COLODNY: Okay, will do, Your Honor.

4                   The next matter is Meghji v. Yarwood, which is  
5 Adversary Proceeding 24-03740. This matter and the other, I  
6 believe, it's four adversary proceedings that are currently  
7 before Your Honor with respect to former employees, are  
8 based off of transfers on accounts of fail to sell token  
9 through the company's OTC desk, bonuses that were awarded  
10 when sell token reached certain price threshold, and  
11 preferential transfers. With respect --

12                  THE COURT: Just so that the record is clear, give  
13 me the lead defendant name in those cases, and maybe the  
14 case number, just so we're clear which ones that we're  
15 talking about. Okay?

16                  MR. COLODNY: Absolutely. The first one is, the  
17 lead defendant is Darren Yarwood, and that is adversary  
18 proceeding 24-03740.

19                  THE COURT: Okay.

20                  MR. COLODNY: The next case is, lead defendant  
21 Niratar, N-I-R-A-T-A-R, and that's adversary proceeding 24-  
22 03738. Next is Ashley O'Brien as the lead defendant.  
23 That's Adversary Proceeding 24-03739. The next is Shahar  
24 Peter. Shahar is spelled S-H-A-R-A-R, Peter as in P-E-T-E-  
25 R. And that's adversary proceeding --

1 THE COURT: On the agenda you have Shahar as S-H-  
2 A-H-A-R. I'm looking -- I'm just looking at the agenda.

3 MR. COLODNY: That's correct, Your Honor. That is  
4 how it's listed on the agenda. I can confirm spelling.  
5 That might have been my mistake in my notes.

6 THE COURT: Go ahead.

7 MR. COLODNY: And that's adversary proceeding 24-  
8 03741. And then, the last is lead defendant Yarden Noy.  
9 Yarden is Y-A-R-D-E-N. Noy is N-O-Y. And that's Adversary  
10 Proceeding 24-03976. Each of those seeks the avoidance of  
11 transfers based off of OTC sales, bonuses that were awarded  
12 when the sell token reached a certain price for preferential  
13 transaction.

14 Mr. Yarwood is located in the United States, and  
15 service was completed on Mr. Yarwood by mail on July 25th.  
16 The litigation administrator initially agreed to extend the  
17 deadline for Mr. Yarwood's answer and then negotiate a  
18 stipulation that was filed last night, which is  
19 substantially similar to the stay that we just discussed  
20 with respect to the Mashinsky et al adversary proceeding.  
21 Mr. Yarwood has agreed to that stay and executed the  
22 stipulation, which was filed in that adversary proceeding  
23 last night. And we would request that the Court enter that  
24 stipulation, which is executed by both the US Attorney and  
25 the defendant in that action.

1 THE COURT: All right, it's approved.

2 MR. COLODNY: Thank you.

3 THE COURT: Just make sure I have the stipulation  
4 in Word format so it can be entered on the docket.

5 MR. COLODNY: We emailed that to Your Honor's  
6 chambers last night.

7 And then, the last four, we believe each of those  
8 defendants are in Israel. Service was commenced, I believe,  
9 on August 2nd, and that is still in process pursuant to the  
10 Hague Convention. Those defendants have not been served at  
11 this time.

12 THE COURT: Okay, anything else to report?

13 MR. COLODNY: I don't believe so, Your Honor.  
14 That's all I had for you today.

15 THE COURT: All right, is there anything else on  
16 the agenda that we need to cover today?

17 MR. COLODNY: I don't believe so, Your Honor. I  
18 believe those were the last matters.

19 THE COURT: All right, all right, does anybody  
20 else have any last comments they want to make before we  
21 adjourn?

22 All right, thank you very much, everyone, for your  
23 participation today. We are adjourned.

24 MR. HERSHY: Thank you, Your Honor.

25 MR. COLODNY: Thank you very much for your time.

1 (Whereupon these proceedings were concluded at  
2 12:36 PM)  
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1 I N D E X

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

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*Sonya M. Ledanski Hyde*

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8 Sonya Ledanski Hyde

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25 Date: August 28, 2024